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IBM: PRODUCER OR PREDATOR
By Sara Baase / page 4

TRUSTBUSTING FOR FUN AND PROFIT
By Alan Reynolds / page 10

PASS ADAM HIS FIG LEAF
By Diane Alexander / page 16

FIGHTING BACK AGAINST CONTROLS
By Henry G. Manne / page 22

THE ACLU AND INVOLUNTARY COMMITMENT:
RESPONSE by Aryeh Neier / page 28
REPLY by Thomas S. Szasz / page 29

EDITORIAL / Manuel S. Klausner
The State as Bookie: Government Lotteries & "Voluntary Taxation" / page 32

MONEY / Davis E. Keeler
A Peso For Your Thoughts / page 33

FOREIGN CORRESPONDENT: England / Pauline Russell
A British Libertarian Party? / page 34

BOOK REVIEWS:
By Thomas Johnson / The Lady and the Tycoon / page 36
By Eugene Guccione / Money and Man / page 36

MOVIES / Charles F. Barr
Zardoz; Serpico; Sleeper; "Bests" of '73 / page 37

TRENDS / Robert Poole, Jr. / page 38

VIEWPOINT / Murray N. Rothbard
Law Without Government? / page 40

FRONTLINES / Lynn Kinsky / page 42

PUBLISHER'S NOTES / Manuel S. Klausner / page 43

REASON PROFILE: Davis Keeler
Lynn Kinsky / page 44

LETTERS / page 46

RUDEBARBS / Randall K. Hylkema / page 49

CLASSIFIEDS / page 50

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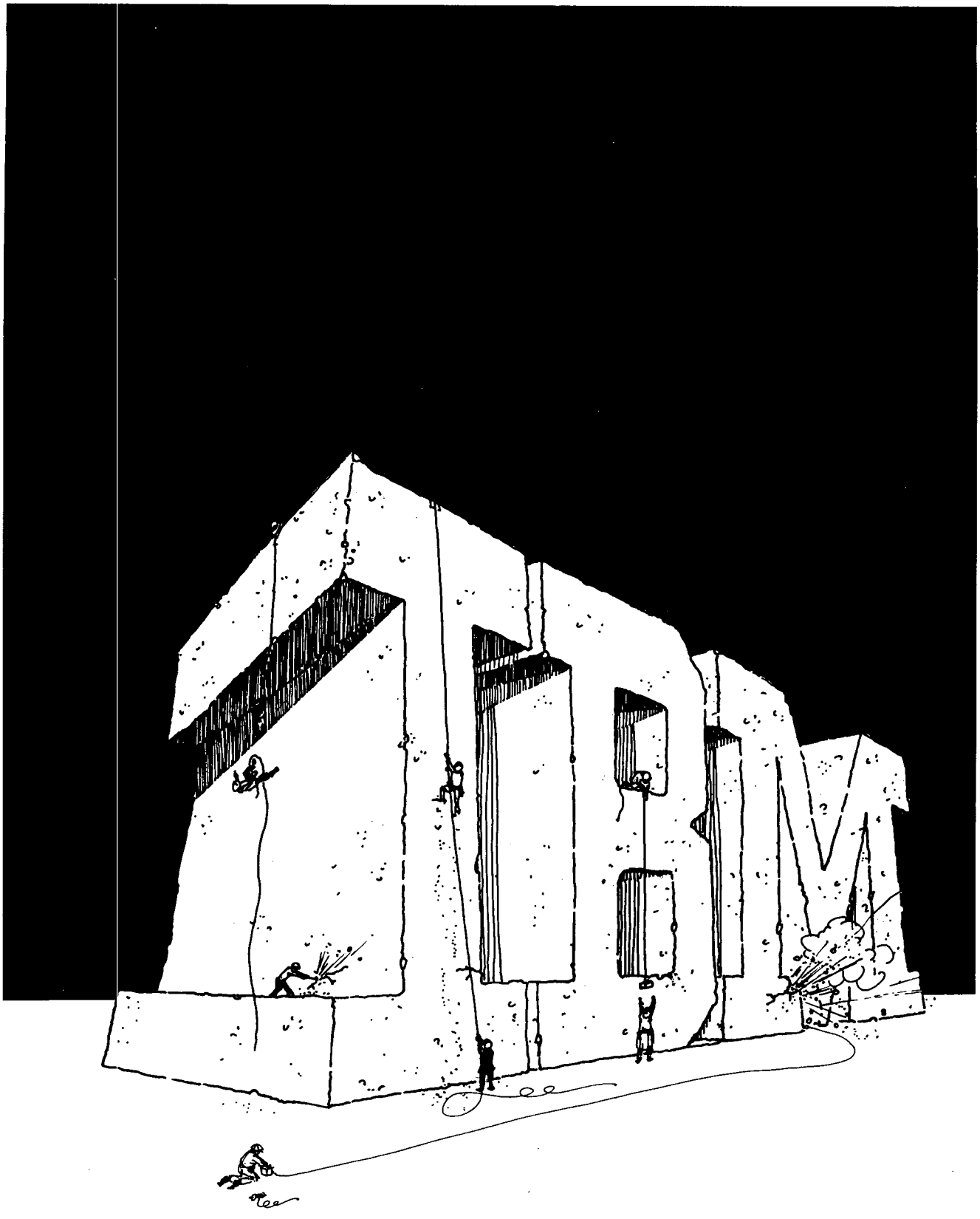

IBM: PRODUCER or PREDATOR

Sara Baase

The computer industry is younger than most of the people who are reading this article, yet it already rivals the automobile industry for first place in affecting our lives. IBM (International Business Machines) dominates the industry and is one of the five largest corporations in the United States. It employs more than a quarter of a million people, has a gross income of $10 billion a year, and, in 1971, paid $1.1 billion in income tax.[1]

Since 1968 a dozen antitrust suits have been filed against IBM. The most significant of these are the suits filed by the Telex Corporation, Control Data Corporation (CDC)—one of IBM's main competitors in the manufacture of computers—and the Department of Justice.[2] The Telex suit went to trial in 1973 and was lost by IBM; the decision is still under appeal. The CDC suit was settled out of court in January 1973. The government suit is still pending and could result in the break-up of the giant company.

The purpose of this article is to provide some background and analysis of these suits and IBM's position in the computer industry.

THE INDUSTRY

We may divide the computer industry into several segments, the first consisting of *main-frame manufacturers;* that is, manufacturers of processing units and main memories. There are only about half a dozen major companies in this area, which is not surprising, since a very large amount of time and capital is required to develop, produce, and market a computer system.

Another segment of the industry consists of *manufacturers of peripheral equipment* such as disk and tape drives, typewriter and graphics terminals, and other input/output devices. The main-frame companies also make peripherals for their own machines. Several firms, including Telex, make plug-compatible peripherals; that is, peripherals specifically designed for computers made by other firms.

Software and service firms make up a third section of the industry. Included here are companies that do contract programming, consulting and systems analysis, lease computers, rent computer time and supply educational services. There are over 1000 firms in these areas, many of which are small. Barriers to entry are low and competition is intense.

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IBM is the major main-frame manufacturer and it dominates most of the other sectors as well. Sixty years ago it was an uninspiring, unprofitable collection of companies called the Computing-Tabulating-Recording Company which produced scales, tabulating machines, and time recorders. In 1913, when Thomas J. Watson was given the job of running CTR, its gross income was a little over $4 million. Ten years later, when Watson changed the name to International Business Machines, income had more than tripled. By 1954, shortly after IBM sold its first computer, income was $460 million.[3] On the average, gross revenue has more than doubled every six years and after tax net income has consistently been above 10 percent!

The government's pending antitrust suit is the third one it has filed against IBM. The earlier suits (1932 and 1952) concerned the company's activities in the tabulating machine industry, but the 1956 consent decree (which settled the 1952 suit) placed significant restrictions on IBM's computer business [4], and is responsible for the very existence of some segments of the computer industry. It required that IBM *sell* its machines as well as *lease* them—there are now over a hundred firms whose *sole* business is leasing IBM computers! They buy from IBM, depreciate the machines over a longer lifetime, and charge lower rental fees.[5] (Recently some of these leasing companies have expressed their desire that IBM be forced out of the leasing business altogether.[6])

Another provision of the decree aided the growth of the computer services business. It required that IBM operate its services business as an independent (wholly owned) subsidiary, Service Bureau Corporation (SBC), and that any equipment and services provided for SBC be on the same terms as for any other company. Ironically, as part of the settlement of the CDC suit last year, CDC bought Service Bureau Corporation from IBM, and since CDC is not under any antitrust restrictions, it expects SBC to be much more profitable![7]

The 1956 decree also required IBM to train personnel and provide technical manuals for anyone who owns, repairs, maintains, or distributes IBM electronic data processing equipment. The decree also ordered IBM to grant unrestricted licenses to companies desiring to use its patents, and enjoined IBM from instituting any suits for patent infringement which occurred prior to the date of the decree.

The aim of these provisions was to cut IBM's share of the market and to "enhance" competition. IBM adjusted its activities to conform with the decree, and then, seemingly treating the new regulations as minor annoyances, continued to grow and

prosper. In 1968 the new attack began.

THE RECENT SUITS

The Justice Department and the numerous companies that have filed antitrust suits since 1968 charge IBM with *monopolizing and intending to monopolize the computer industry*.[8] The central theme underlying these suits is that IBM's *size, structure, experience,* and *salesmanship* make competition difficult and therefore are unfair.

The Justice Department and CDC suits begin by citing statistics and characteristics of the computer industry which illustrate IBM's dominance. IBM's share of the main-frame computer market is roughly 70 percent (and has been as high as 90 percent). IBM spends more than $200 million a year on research and development, more than the total value of computers shipped by any other company. IBM has obtained thousands of patents which it uses

"IBM's 'price umbrella' is responsible for the existence of many firms such as Telex which sell and lease at lower prices."

to "entrench its monopoly power." IBM dominates the education market, training people on IBM machines, and a substantial number of personnel in other firms were formerly employed by IBM. Thus, there is a large pool of computer users who are predisposed to use IBM equipment. IBM has large quantities of accumulated software and related services to offer its customers. IBM has spent many millions of dollars advertising ("touting," to use CDC's word) its extensive installations in all industries, its software libraries, and its massive force of systems analysts, etc.

Certainly all of these factors make the job of IBM's competitors very hard, but they are simply evidence that IBM does a good job and has been productive in the computer field for a long time!

Most of the actual "offenses" listed in the suits concern IBM policies allegedly designed primarily to take business away from competitors. A survey of the major complaints follows.

SOUR GRAPES

IBM anticipates and usually gets very high profits (20-30 percent before taxes) on its products. One might think that the suits would criticize these profit rates. However, IBM's "price umbrella," as it is called, is responsible for the existence of many firms such as Telex which sell and lease at lower prices. Telex complained in its suit that IBM deprived it of the right to compete—by reducing prices to meet Telex's competition. Similarly, the Justice Department suit complains that IBM introduces low-profit machines in markets where competitors have been very successful. *The government has asked that IBM be prohibited from producing equipment on which it is not likely to make profits comparable to those it expects on its other products.* Apparently some firms want to compete with IBM but don't want IBM to compete with them!

Until shortly after the government suit was filed, IBM priced a computer to include software and related support (for example, maintenance, and training of personnel) thus making it more difficult for firms that specialize in software and support services to compete. This practice, called "bundling," often required buyers to pay for a lot of services they did not want at all or could have obtained more cheaply elsewhere, but they wanted IBM equipment enough to accept the package deal. Several of the suits list bundling as one of IBM's offenses, claiming that the firm's dominance of the industry makes it an anti-competitive tactic.

In June 1969, IBM announced an extensive plan to unbundle. The plan included a three percent decrease in computer prices coupled with separate charges for training customer personnel, for some software, and for other services. The unbundling plan was hailed by many software firms as a great boon to competition and, in particular, to their business. Others complained that it did not go far enough and have continued to press for further unbundling. Some firms were very critical of IBM's decision to consider a large number of its programs in the public domain and hence available for free, since naturally no one would pay a software company to write the same or only slightly better programs.[9]

The suits complain that IBM practices price discrimination (by outright discounts and other means) favoring customers in areas where competition is intense or where IBM stands to lose a customer or gain other benefits such as prestige. Here again, in the name of fair competition, IBM is not supposed to compete.

The government suit and several firms specifically criticized IBM's extremely large discounts to universities, the reasoning being that students who learn how to program on IBM machines will be predisposed toward them later and that some of the computer science research done at the universities may be mainly relevant to IBM machines. That the university, as well as IBM, benefited from the discount was ignored. In 1969 IBM modified its discount policy for universities (much to their distress) and now gives the same discounts as other manufacturers.

IBM is also accused of discriminating against companies that buy rather than lease equipment, by providing poorer and slower service. Such tactics were forbidden by the 1956 consent decree.

GHOSTLY MACHINES

During the late 1960's there was a trend of IBM main-frame users toward buying peripherals from other companies because of the poorer quality, higher prices, and remote delivery dates of some comparable IBM products. (It should not pass unnoticed that IBM loses customers when they can get better or cheaper service elsewhere.) According to testimony in the Telex trial[10], in 1970 IBM formed a (secret) task force to find ways to reverse the trend. This task force recommended long-term lease plans, very large price cuts (disguised by giving existing models face-lifts and new model numbers), and strategic timing of product announcements to confuse the marketing plans of other companies and keep computer users always expecting something new from IBM. IBM allegedly would plan several improvements and new models for a product in advance, then announce them one at a time until they regained the sales they had been losing. All of these policies drew heavy criticism from Telex in its suit.

Aside from strategic timing of announcements for products it really produced and sold, IBM is accused of announcing machines with specifications it could not and never intended to meet in order to cause delay or cancellation of orders to competitors. A full page of the CDC suit, entitled "Paper Machines and Phantom Computers," is devoted to this charge. CDC believes it was victimized twice by IBM's announcements. In the early 60's when CDC decided to enter the scientific computer market

"Apparently some firms want to compete with IBM but don't want IBM to compete with them."

(where IBM was not active), IBM announced a computer for the same market. The specifications were spectacular, but they were not met. After at least four delays in the delivery date and modifications of the design cutting the power in half, less than a dozen were ever delivered.[11] In the mid 60's, when CDC introduced its model 6600[12], IBM, admitting that the 6600 was the fastest computer on the market, announced that it was developing one that would be "more powerful."[13] Again there were delays, and IBM never really sold many of its high speed models. In both situations, however, its announcements caused serious losses for CDC.

Although it is not identified as such by IBM's opponents, the issue underlying CDC's criticisms of IBM announcements is whether such activities are fraudulent, or reflect poor planning and the uncertainties of designing new computer systems in a rapidly changing technological environment. To what

"Much of what IBM's opponents call coercion and intimidation is high pressure salesmanship."

extent can or should a company be held legally responsible for the claims it makes in its product announcements? Certainly, the tactic of announcing "phantom computers" is unethical, and won't work indefinitely.[14]

Charges of IBM coercion, intimidation, and misrepresentation are frequently made, but details are rarely included. The CDC suit devotes a section to these charges and gives as an example of coercion the setting of quotas for salesmen. Some users have complained that IBM threatens to stop maintenance service or cancel leases if the user attaches equipment made by a competitor to an IBM main-frame. One writer[15], very critical of IBM, cites the statements "Of course, it's your neck that's going to be on the chopping block if you select non-IBM equipment and it fails," and "You could be making a serious mistake by not maintaining contact with IBM technology," as typical examples of threats against data processing managers who make acquisition decisions. The weight of these "threats," he says, derives from the fact that computer vendors, particularly IBM, serve as an informal employment service for data processing managers. The same writer complains that IBM circulates "inflammatory literature" to discredit its competitors. His examples include articles from the *WALL STREET JOURNAL* and other non-IBM sources. (He proposed that IBM "be restrained from the use of criticism of their competition, whether stated verbally or written by an IBM employee or other individual." Apparently he objects to freedom of speech!)

Much of what IBM's opponents call coercion and intimidation is high pressure salesmanship. If IBM uses its considerable influence in the computer industry against individuals who have crossed the firm, it is guilty of a breach of ethics, but even IBM's critics do not accuse it of criminal activity in this area.

There is no doubt that IBM does many of the things it is accused of, but, except for those which may involve force or fraud which should be resolved in a criminal court with IBM's size and position in the computer industry being irrelevant, its actions are illegal only if the firm is engaged in "unfair competition." Thus, the legal cases depend on whether IBM is simply trying to protect its business and profits or is trying to "hurt" its competitors. The distinction is more than a little obscure.

In the Justice Department case, when IBM asked for a separate trial to define exactly which market it supposedly monopolizes, the government

vigorously opposed the request. The 70 percent figure often quoted as IBM's share of the market refers only to the main-frame market, but it is quite clear that IBM's opponents want to curtail its operations in *all* areas of the computer industry. The government, CDC, Telex and others have asked that IBM be split into several smaller firms: the points they debate are the number and type of pieces, and how to ensure that none of the pieces become strong.

THE CIA

The Justice Department has admitted several times that it knows little about IBM and the industry. In order to provide "industry input" into the case, a group of very vocal IBM opponents (executives from about eight competitors, mostly peripherals makers, including Telex) formed the Computer Industry Association (CIA). The CIA has diligently drawn up plans for splitting IBM, submitted a proposal to the Justice Department for "early relief," held numerous meetings, and issued myriad statements encouraging the government to take action against IBM. The CIA's activity has not been in vain. Several of the proposals in its early relief plan[16], submitted to the Justice Department in February 1973, found their way into the decision in the Telex trial. These proposals and the provisions of the decision indicate that the aim of IBM's opponents is "a piece of the action," and that they are likely to get it via antitrust.

"IBM's 30 percent profit margins are commonly considered prima facie evidence of its monopoly power, while its 20 percent profit margins are considered evidence of predatory pricing."

One of the major complaints of the CIA is that IBM does not release the information needed to design plug-compatible peripherals. According to the president of the association, IBM destroys "their competition by announcing new industry standards which, because of their prior knowledge, give IBM an unfair competitive advantage."[17] By "new industry standards" he means simply new design of IBM products. The statement continues, "Anything IBM does becomes a de facto industry standard, and if your product isn't compatible with IBM *nobody will buy it*" (emphasis added). Thus he is complaining about "standards" which are enforced not by IBM but by computer customers! (Such distinctions would undoubtedly be lost on the gentleman.) The CIA proposed that IBM be required to disclose complete specifications of the interface between all its products. The judge in the Telex case ordered IBM to disclose "information describing the design of the electronic interface" to each peripheral.

The CIA proposed that IBM be forced to release customers from penalties for lease cancellation with 30 days' notice, thus voiding provisions of contracts that have already been signed. It also asked for restrictions on penalty clauses in future contracts. Both proposals (with slight modification) were part of the Telex decision.

The CIA proposed that IBM be enjoined from pricing at "a low-profit or no-profit level with the intent or effect of eliminating competition." Telex charged IBM with predatory pricing during the competition mentioned earlier over the peripherals market. The judge found IBM guilty and enjoined the company from predatory pricing—even though its profit margin on the products in question was at least 20 percent. Observe that IBM's 30 percent profit margins are commonly considered prima facie evidence of its monopoly power, while its 20 percent profit margins are considered evidence of predatory pricing! (It should be emphasized that the CIA offered its early relief plan as suggestions for immediate injunctive action. Their long range goal is dissolution of IBM.)

LEGALIZED RIPOFF

Telex won the case and was awarded triple damages amounting to $350 million, which is more than five times its annual gross revenue. (The judge later reduced the fine to $259 million.) There was one offense brought out in the trial that involved violation of a company's rights: *Telex* was found guilty of infringing IBM patents and stealing IBM trade secrets!

The Telex case inspired several small companies to get in on the pickin's. One company which had filed a suit in 1971 announced after the Telex decision that it was considering filing another. A month later it dropped the earlier suit and the plans for a new one—in exchange for a $3.5 million contract to do product development work for IBM. The president of the company stated, "We're cancelling our previous suit in return for our contract."[18]

A few more examples should suffice to illustrate the goals of IBM's opponents.

CDC's suit complained of IBM's "anti-competitive" and illegal monopolistic practices, but CDC settled out of court for some attractive business concessions. It acquired Service Bureau Corporation, the free use of IBM equipment at SBC (for six months), about $30 million in research and development contracts from IBM, an agreement that IBM would stay out of the data services business for six years, and other benefits worth millions of dollars.[19]

An executive of Memorex, claiming that financing, not technology, is the major problem facing every company in the industry except IBM, has proposed that IBM's "excess capital" be made availa-

ble to users to finance computer purchases from other manufacturers.[20] He didn't seem concerned with why IBM had this capital, nor did he explain why it was "excess." (Memorex is in serious financial condition as a result of its unsuccessful attempt to enter the main-frame business.)

Information about how IBM operates is a valuable commodity. The firm has had to turn over to the government, and to companies that have filed suit, more than 40 million pages of documents. Many individuals, organizations, and firms in the industry have hailed the release of once confidential IBM papers, claiming that the disclosure of such information is of "major benefit to the industry and the nation." The most notorious public release consisted of some 40,000 pages of IBM documents that went into the trial record in the Telex trial. *The court prepared a copy of the documents for the Computer Industry Association, which sold copies at $5000 each to other firms.* The documents include confidential minutes of top level management meetings, discussion of an entirely new computer system that would require fundamental changes throughout the industry, detailed reports on profits and costs for individual products, details of research and development expenditures, pricing and profit policy, plans for gathering information on competitors, and perhaps of most interest to computer users, IBM's own "consumer reports"—results of its very detailed critical analysis of its computers which rated several models of its System 360 inferior to other machines on the market.[21]

Clearly these documents will be valuable reading for IBM's competitors and for anyone interested in the computer industry. Just as clearly, I think, these eager readers have no more right to them than they have to read anyone's personal papers without permission.

THE USERS' VIEWS

The antitrust suits have been filed by the government and by competitors of IBM. The public statements have been issued mostly by competitors and politicians. What do the customers think?

DATAMATION, a monthly magazine for computer users, carried out a formal survey of 400 data processing managers aimed at finding out what users think of the eight major main-frame manufacturers.[22] In the areas of "after-sales service," "product reliability," "support," and "live up to claims," IBM ranked highest, being far ahead of the second ranked company in the first three of these categories. IBM ranked lowest in "product performance per dollar." Finally, IBM was a close second in the "most ethical" category. The discrepancy between the user viewpoint of IBM's ethics and that presented in the antitrust suits and trade journal articles implies that either the charges are without substance or customers find other companies worse than IBM.

> *"IBM did not simply come along and take over an existing market; it* created *the market."*

DATAMATION asked its panel to rank the factors they considered when making acquisition decisions. Most of the respondents placed product performance and vendor support ahead of price. However, those who use non-IBM main-frames usually ranked price ahead of product performance. There isn't much difference of opinion about exactly what IBM's good points and bad points are.

Many critics claim that other companies produce better computers and incorporate more of the latest technology into their machines. Such claims are often true, but to many customers they are beside the point. The critics overlook the importance to the computer user of reliability, program support, and services.

I have mentioned the complaint by the president of the Computer Industry Association that IBM sets the standards in the industry. *DATAMATION* tested the accuracy of the claim that "IBM controls the release of new technologies" because "people are reluctant to buy something new until IBM gives its blessing." Eighty-three percent of the respondents said it's not true; they trust their own staff's ability to judge new technologies. (The *DATAMATION* editor was skeptical.)

Sixteen percent of the panelists who replaced IBM memories or peripherals with other manufacturers' equipment said that IBM maintenance service (on their remaining IBM equipment) declined. Apparently IBM sometimes gets nasty if you deal with its competitors.

The rankings of RCA in the survey were enlightening. The fact that RCA, a large, well-financed company, withdrew from the computer business is used by IBM opponents (the Computer Industry Association and the government) as evidence that IBM "destroys competition" and that immediate government action is needed to protect it. RCA ranked lowest in 4 of *DATAMATION's* 6 categories; it received extremely poor ratings in the ethics, lives up to claims, after-sales service, and support categories. It looks like it was competition, not the lack of it, that drove RCA out!

CONCLUSION

This survey of the charges in the antitrust suits and the motives of IBM's most vehement critics and opponents shows that the suits are really *attacks on success.*

What has been responsible for IBM's fantastic success and growth? Although IBM didn't produce

the first electronic computer, it has been the major impetus in the creation and promotion of the whole field of information processing by computer. It did not simply come along and take over an existing market; it *created* the market. IBM's sales campaigns have convinced companies to acquire computers to do jobs that were previously done without them. This policy of seeking out new uses for its machines has always been an integral part of its marketing policy. A study of the young computer industry written in 1955 stated that "IBM's outstanding long term growth record reflects excellent management, a superior research organization, aggressive sales policies and a capable service department. Large expenditures for research and engineering have kept the Company in a strong competitive position."[23] This statement would be an accurate description of IBM at any time since shortly after Watson took over. The four areas listed—management, research, sales, and service—are all areas where IBM excels, according to its strongest critics as well as its friends.

The government suit is scheduled to go to trial late this year. Some observers see the great complexity of the case and the importance of IBM in the industry as reason to believe that the government won't take strong action against the company. The result could be just the opposite. Recognizing the extraordinary amount of time and money needed to gather and organize evidence for such large antitrust cases, Senator Philip Hart has introduced legislation that would replace the expensive, time consuming step of proving guilt with statistical criteria such as profit rates and share of the market.[24] He cited the IBM case in support of his claim *that the government should be permitted to break up big companies without having to prove any wrong doing.* This attitude is an all too common one which will continue to exert a strong influence on the IBM case. The Justice Department, the Computer Industry Association, and some IBM competitors and critics agree with Hart; IBM's size and success are crimes enough. ◻

NOTES AND REFERENCES

[1] *IBM ANNUAL REPORT* (1972).

[2] The complete texts of the CDC and Justice Department suits appear as appendixes in Bruce Gilchrist & Milton Wessel, *GOVERNMENT REGULATION OF THE COMPUTER INDUSTRY* (AFIPS Press 1972).

[3] William Rodgers, *THINK: A BIOGRAPHY OF THE WATSONS AND IBM* (Stein & Day 1969), p. 81; Thomas G. Belden & Marva R. Belden, *THE LENGTHENING SHADOW: THE LIFE OF THOMAS J. WATSON* (Little, Brown, & Co. 1962), p. 123; and Arthur D. Little, Inc., *THE ELECTRONIC DATA PROCESSING INDUSTRY* (White, Weld, & Co. 1956), p. 68.

[4] The text of the consent decree appears in Gilchrist & Wessel, *op. cit.*

[5] *Ibid.*, p. 167.

[6] "IBM's 'Unbundling' Move Makes It Target of Growing Criticism by Computer Makers," *WALL STREET JOURNAL,* July 24, 1969, p. 4.

[7] "Control Data Settlement Seen as Setback By Others Suing IBM," *WALL STREET JOURNAL,* January 22, 1973.

[8] The Telex suit charges IBM with monopolizing the market for plug-compatible peripherals *for IBM main-frames.*

[9] "IBM Discloses Plan for Separating Its Computer and Services Prices," *WALL STREET JOURNAL,* June 24, 1969, p. 38. Prior to the unbundling, one software company actually tried to obtain an injunction prohibiting IBM from providing for its customers a free sorting program similar to one the plaintiff rented for $200 per month. The judge denied the injunction, but not because IBM had a right to give away its programs, nor because the injunction would force users to pay for something they could have had for free. His reason was that the evidence did not show that IBM provided the program mainly to take business away from the other firm, or that the firm was damaged irreparably. ("Bid by Programmatics to Restrict IBM in Distributing Computer Program Denied," *WALL STREET JOURNAL,* June 8, 1969, p. 8).

[10] *COMPUTERWORLD* May 2, 1973, numerous articles.

[11] "Datamation in Business and Science," *DATAMATION* February 1961 and January 1962 for rescheduling and reduction of power. See Rodgers, *op. cit.,* pp. 254, 258 for CDC's attitude.

[12] The CDC 6600 was developed on contract from the AEC, as were several later CDC "number crunchers" (big, fast, scientific computers). CDC provides the federal government, the computer industry's largest customer, with 65 percent of its computers priced over $1,500,000. (Only 21 percent of all the federal government's computers were made by IBM.) *INVENTORY AND SUMMARY OF FEDERAL ADP ACTIVITIES FOR FISCAL YEAR 1972* (General Services Administration).

[13] "IBM Says It Will Develop Giant Computer Twice as Speedy as Fastest Current Model," *WALL STREET JOURNAL* August 19, 1964, p. 6, and Rodgers, *op. cit.,* p. 288, pp. 304-06.

[14] When IBM began breaking promises about delivery of some System 360 models in 1965, other companies ran advertisements reminding users that they, unlike IBM, did not repeatedly promise what they could not produce. Rodgers, *op. cit.,* p. 288. CDC has also missed deadlines for several of its scientific computers, most recently its STAR computer.

[15] Anonymous contribution to "The Forum," *DATAMATION* October 1973, pp. 183-86.

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TrustBusting
For Fun & Profit

Alan Reynolds

"After creating one of the most dynamic and well-run organizations in the United States' industrial history . . . the reward is the threat of divesture, regulation, or forced reduction in size."

Dan McGurk, President
Computer Industry Association

For many years, conservative economists were among the most vocal spokesmen for a vigorous antitrust policy. The late Henry Simons, patriarch of the "Chicago School," advocated a strict limitation on company size as part of his "positive program for laissez faire." And only a generation ago, University of Chicago economist George Stigler argued (in *FORTUNE* magazine, no less) that the Antitrust Division should "break up the giant companies."[1]

Recent analysis and research, much of it by Professor Stigler himself and by his former students, has now discredited this simple identification of "competition" (meaning textbook equilibrium, not the dynamic process) with firm size or market shares.[2] Other work, notably D. T. Armentano's *THE MYTHS OF ANTITRUST,* has shown that actual antitrust enforcement has been capricious and often anticompetitive in its effect.[3] This should not be too startling. There is something vaguely paradoxical about charging government with the task of defending competition, when government itself enforces most collusive pricing—through regulatory agencies, occupational licensing, "fair trade" laws, etc. The most blatant of private cartels, such as sports organizations and labor unions, are also essentially exempted by law from antitrust prosecution, as are most insurance companies, export associations, agricultural coops, and other pressure groups. That doesn't leave much, of a positive nature, that antitrust could do, even in theory.

Public policy and the paperback exposes are, as usual, a generation behind the advances in economic knowledge. Specialists in industrial organization now commonly agree that any realistic appraisal of competition must consider: (1) a broad view of markets—including foreign and used goods, rentals and leasing, potential competitors, and similar products or services from nominally-different "industries;" (2) a dynamic perspective—including the entry and growth of new firms, and the rapidity of technological change; and (3) a consideration of information costs—including buyer sophistication, availability of consumer-oriented publications and advertising. In short, economists now see competition in the same light as do those who are engaged in it—as a complex, continual process of trying to get and retain customers through changes in price, design, services and selling efforts.

IDENTIFYING IBM's COMPETITORS

A good example of the new approach was the affidavit of M.I.T. Professor Franklin Fisher in the widely-publicized antitrust case of *Telex vs. I.B.M.* Professor Fisher pointed out that data processing is a young industry in which constantly changing technology creates opportunities for new firms and risk for the old ones. Because of interchangability, for example, more and more companies are producing portions of data processing systems as well as peripheral equipment such as disc drives and terminals. The number of companies who lease data processing equipment has grown from 30 in 1966 to 150 in 1969, according to Dr. Fisher. One out of five companies use a service bureau to process data, as an alternative to leasing or purchase.[4] On this broad view of *the choices facing a prospective data processing customer,* the number of competitors has grown from 11 to 1,757 in eighteen years (the trial court's findings in *Telex vs. IBM* state that the number of competitors went from 13 in 1952 to 1,773 in 1970), and IBM's share has fallen from 68 to 38 percent. The fact that firms from all of these IBM-substitutes are actively involved (e.g., by funding the Computer Industry Association) in getting IBM broken-up or regulated indicates that *they* regard themselves as competitors of IBM. The plethora of ads specifically mentioning IBM as the adversary (e.g., Dictaphone's "Bad News for IBM" ad) lends further support to the broad market view, as does the classified section of any trade publication—which typically includes myriad firms offering to buy, sell or lease used or new IBM data processing equipment.

Even if we consider only the manufacturers

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of complete data processing systems, their number has increased from 25 in 1962 to 62 in 1970 (the *Telex* decision says 3 in 1952, 96 in 1972). IBM's share of this narrowly-defined market declined, by Dr. Fisher's calculations, from 69 percent in 1952 to 54 percent in 1970. A misleading piece of information was widely circulated to the effect that IBM computers were 65 to 70 percent of those "in use":[5] But many of those "in use" were built before most rival manufacturers even existed, and some of IBM's toughest competitors are firms that lease or sell used IBM equipment or computer time. Concentration statistics also carefully define the market to exclude analog and specialised (e.g., NASA) computers—areas where IBM isn't faring too well. Or, they talk about IBM's share of the *world* market, which shouldn't be any concern of the U.S. government.

Nor is this a case of huge IBM versus pathetic little rivals. Manufacturers of mainframe units are all well up the list of Fortune's 500: Honeywell, Sperry Rand (Univac), Burroughs, Control Data and National Cash Register. Significantly, the data processing revenue of IBM's seven largest competitors grew three times as fast as that of IBM from 1967 to 1970.[6] Manufacturers of other data processing equipment include Xerox, GM, AT&T, Litton, Hughes, Westinghouse and Singer. Raytheon, Sylvania, Bendix, TRW, GE, Underwood, Packard Bell, Philco, and RCA have also dabbled in the field, and remain as potential competitors. It isn't easy to feel sorry for these "little guys." The truly small minicomputer market—which is dominated by Digital Equipment, Data General and Intel—is doing well and presents a possible threat to IBM, because huge and expensive computers may soon be replaceable by expandable systems of combined minicomputers.[7]

To argue on the basis of market shares, however, is to imply that market share alone is an adequate measure of competition. If IBM were inefficient in supplying wanted products and services, or if it failed to make risky innovations (like the System 360), IBM's share of the rapidly expanding market would be quickly eroded.[8] That is, the structural theory leads to the paradoxical conclusion that price-gouging or complacent inefficiency on the part of IBM would increase "competition" by reducing the leading firm's share of the market.

THE OTHER C.I.A.

The fact that some of IBM's competitors have formed a free-spending organization, the Computer Industry Association, invites suspicions that they may simply be looking for an easy way to bring IBM down to their level, to avoid the challenge of providing better products and services at lower prices. "It is time to stop being divided and conquered," says the C.I.A. literature, "It is time to work together for a more competitive industry." In other words, here we find competitors colluding in the name of increasing competition. "Our recommendations reflect the thinking of the entire industry," says C.I.A. President Dan McGurk, "As a result the recommendations cannot be challenged as self-serving."[9] But notwithstanding McGurk's self-serving view, entire industries *do* have a common interest in getting government regulation to protect them against low prices, or against pressures to maintain a fast pace of technological advance. "If you take all of the [C.I.A.'s] proposed regulatory restraints on IBM and implement them," says McGurk, then IBM "will be under regulation similar to the FCC regulation of the telephone company."[10] Let the buyer beware.

> On October 31st, the chief executives of Control Data, Honeywell, NCR and Sperry Rand, met with Thomas Kauper, Asst. Attorney General in charge of the Antitrust Division of the Department of Justice. . . . They asked for separate pricing of IBM's products; a prohibition against 'predatory' and 'discriminatory pricing'; an injunction against 'premature announcements' of new products. In addition they asked that IBM be required to license its patents *and 'know how'* for hardware and software to all comers on a *reasonable* royalty basis; to disclose [at no cost?] interface specifications between separate hardware products, media and software at time of announcement or two years before first deliveries . . . ; and that IBM would be required to *sell any unique device* on an OEM basis to other manufacturers until such time as an alternative source for a similar device came on the market; and a *limitation on IBM's rate of growth* to no more than that of the overall market . . . .
>
> [T]hese four big companies . . . are to be congratulated for setting aside their differences in favor of the best *interests of the industry* and [by definition] the nation.[11]

Isn't it quite obvious what is going on here? As Dan McGurk himself even noticed, "it seems that anyone who proposes a divestment or market practice change in this industry has some self-serving end in mind."[12]

THE TELEX DECISION

What makes sense in economics rarely makes sense in politics or law. The antitrust laws are unique in that the Justice Department wins about 80 percent of the time, and three-fourths of the wins are settled by consent decree.[13] This is because antitrust verdicts are unpredictable, and treble damages can be staggering (perhaps $30 billion in the pending Justice case against IBM). The vagaries of the law were inadvertently catalogued by Judge Sherman Christensen in the *Telex vs. IBM* decision:

> Neither the actual exclusion of competitors nor the realization of unreasonably high profits are elements essential to the offense of monopolization .... A specific intent to monopolize is not an essential element of the offense of monopolization ... [and] it is not essential that monopoly be accomplished by unreasonable restraint of trade or predatory practices.

Monopoly, in short, is whatever individual judges say it is—after the fact (this is the so-called "rule of reason").

These ambiguities create paralyzing uncertainty and violate the "rule of law" ideal, since it is virtually impossible to know beforehand whether or not many actions are legal or illegal. Yet strict adherence to *per se* rules is equally undesirable, because there is no clear evidence of anticompetitive behavior or "structure" that would be applicable in all cases. "IBM lawyers were so certain of their legal grounds in the Telex case," says *FORTUNE,* "that the company made no serious attempt to settle it before trial. After all, they could have reasoned, similar marketing practices had been upheld by a federal judge in Phoenix who summarily dismissed Greyhound's complaint.[14]

BUNDLING AND PREDATORY PRICING

In the Telex case, Judge Christensen found that IBM priced equipment and services in bundles to prevent users from buying part of their needs elsewhere, used long-term leases to keep customers from switching to competitors' new offerings, and monopolized part of its own product (?) by not giving rivals advance notice of changes in the interface or "plug" between components. Christensen also found Telex guilty of stealing IBM trade secrets, which is one source of the "substantial error" the judge later confessed to in determining damages: If Telex's very existence was largely conditional on a parasitic relationship with IBM, how could Telex be said to be victimized by IBM to the extent of a sizable multiple of Telex's recent profits?

The charge against IBM of "bundling" or tie-selling has little long-run significance. If buyers aren't pleased with the whole package deal, or if the package is priced to yield monopoly profits, entrepreneurs will have a tremendous incentive to assemble rival packages—possibly from several sources. Similarly, there are many companies now leasing IBM and other equipment who would provide short-term leases if customers wanted them. Nor is it true that large capital requirements are a barrier to competing with IBM: Money from stocks, bonds and loans is available in virtually unlimited amounts if the opportunity presents itself.[15] Finally, the Quixotic efforts to enlist IBM's help for sharpies who want to copy portions of IBM systems can have only one result: IBM will simply build integrated systems without many separate components.

The main issue, then, is the suspiciously familiar charge of "predatory pricing." Yet if IBM cut prices where it faced tough competition and raised them where it did not, as charged, then any antitrust action should logically be directed toward the high-priced monopolized market, not toward the low-priced competitive lines. "Monopoly power," said Judge Christensen," is the economic ability to charge unreasonably *high* prices"—not unreasonably *low* prices. Yet antitrust, like other government regulation, has a long tradition of being used to protect firms from "cutthroat" competition—i.e., low prices. The Federal Trade Commission Act of 1914 was mainly concerned with stopping practices which were "unfair" to other sellers. The Robinson Patman Act of 1936 was intended to restrict discounts (which are *the* main instrument for dissolving cartels), and to "protect small business in particular."[16]

"Monopoly is whatever individual judges say it is—after the fact. (This is the so-called 'rule of reason.')"

Jack Biddle of C.I.A. estimates, in an interview, that I.B.M. cut prices of peripheral equipment by something like 16 percent on the average, and raised other prices by about 5 percent (not an astounding rate by recent standards). To put the 16 percent price cuts in perspective, IBM had long "reaped a profit of over 50 percent on several items," according to *FORTUNE'* so that plug-compatible manufacturers were easily able to undercut IBM on such items by "around 20 percent."[17] "There wasn't any evidence that IBM reduced prices below cost and reasonable profit," admitted Judge Christensen, and "Telex products were at all points in time listed at lower prices than comparable IBM products."[18]

This is the familiar issue of "gravy-skimming," where new entrants are attracted to those products on which a firm has been earning "monopoly profits" (other examples are the "interconnect" communications equipment suppliers, United Parcel, and chartered flights). Far from being evidence of monopoly power, such price cutting is proof that prior market power is slipping. Until recently, peripheral equipment has accounted for sixty percent of IBM's revenue. If IBM always had the power to raise prices of computers, without losing customers and attracting new rivals, it would not have waited until now to do so. Actually, mainframe computer prices have fallen continually and drastically, while product performance improved exponentially. IBM's recent price changes are not evidence of monopoly.

Judge Christensen's injunction requiring "substantially uniform mark-ups" would simply prevent prices from attracting resources to areas where demand exceeds supply, and to items where high risk

can be offset by initially high mark-up.

If a big firm prices products below the going rate of return, it suffers the same loss per unit as competitors but on a larger and growing volume. If the lower prices only impose losses on smaller firms, then the larger firm is simply more efficient, and wouldn't need to use monopoly power to obtain monopoly power—whatever that means. Besides, any rivals driven out of business by below-cost pricing could easily return as soon as prices went back up. **Predatory price cutting is therefore an historically rare and logically implausible strategy.** If there are no barriers to entry, predatory pricing can only yield possible short-run gains at the expense of certain losses; if there *are* barriers to entry, established firms already possess monopoly power and predatory pricing would be redundant. [19]

THE BETTER THE BIGGER

"The key to the monopoly," suggests Dan McGurk, "is IBM's ability to set large-volume manufacturing of components and therefore *bring the price down.*" That suggests economies of scale. Elsewhere, however, the C.I.A. says that "Honeywell, Burroughs, Univac and NCR have proven that a mainframe company can be viable and efficient at the $1 billion dollar per year revenue level." [20] Some evidence on this point is reproduced in the table below [21]

RATES OF RETURN[a] BY SIZE OF FIRM AND INDUSTRY CONCENTRATION

Four-Firm Concentration Ratios (1963 or 1970)	Average of 1963 and 1969 Rates of Return by Asset Size: Under $500,000	$500,000 to $5,000,000	$5,000,000 to $50,000,000	Over $50,000,000
10–20%	6.9%	9.7%	10.9%	10.2%
20–30	5.3	8.9	9.6	9.7
30–40	5.1	8.7	9.9	10.4
40–50	4.6	9.1	10.0	8.8
50–60	4.8	10.3	10.2	13.2
Over 60[b]	−1.3	10.0	10.9	20.3

[a] Profit before taxes and interest – total assets.

[b] Three industries

This data strongly suggests that firms are large—both absolutely and relative to their markets—because they are profitable, and not the other way around. Such firms cannot be profitable because of concentration—since monopoly pricing would also make smaller firms in the same industry equally profitable—but because of greater efficiency. Neither asset size (above $500,000) nor concentration (few firms) alone can explain the 13.2 and 20.3 percent profit rates of large firms which dominate their industries. This being so, efforts to reduce size or concentration, both of which appear to follow from efficiency, must be viewed with great suspicion.

Those who maintain that large size is not necessary to least-cost production often neglect the importance of services which are related to the product. No other computer firm has yet offered service facilities which are remotely comparable to those of IBM. The distribution and service outlets of car manufacturers are likewise a major explanation of concentration in that industry: How many separate makes and models could profitably be distributed and serviced in many small towns?

Jack Biddle, executive director of the Computer Industry Association, is not content with merely cutting IBM into pieces according to type of product, because "in each of those areas IBM would have a monopoly of that segment of the industry." In other words, the *largest* firm in any submarket is

"Many firms are quietly making a lot of money in data processing by providing better products at lower prices. Others find it easier and more lucrative to sue IBM."

defined as a "monopoly." There should be no largest firms. What if, after being broken-up to the C.I.A.'s satisfaction, one of the IBM segments again rose to dominate some part of the electronic data processing industry? Biddle says, "When you get any company that has 70% of the market, even though it's one of those seven new companies into which IBM has been broken up . . . you break up the new company." [22]

Consider the dynamic implications of any such rule to automatically break-up any company that approaches a certain percentage of a narrowly-defined market. Wouldn't a firm that was nearing the limit have an incentive to raise prices, lower quality, or simply relax? Is that apt to benefit consumers? C. Jackson Grayson, former head of the Price Commission, notes that already "several heavy-industry companies reported that they feared competing too aggressively on price because they would capture a larger market share . . . and be subject to Justice Department or competitor antitrust suits." [23]

There is an irreconcilable conflict between helping *competition* and helping *competitors.* Many firms are quietly making a lot of money in data processing by providing better products at lower prices. Others find it easier and more lucrative to sue IBM—proving once again that antitrust laws seek victims without crimes. ◻

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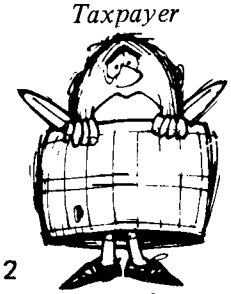

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Pass Adam His Fig-Leaf

Diane Alexander

Ever since 1894, when Edison's kinetoscope debuted in a Broadway parlor, the things which you are allowed to see on a movie screen, and in person, have been considered as quite different.

"Ever since April 1894, thousands of small pressure groups, backed by the power of God, government, and box office, have decided what films you may or may not see."

You might sleep with your spouse in a double bed, but for years in films, married couples slept lonesomely in twin beds set 18 measured inches apart.[1] *You* might say "Damn!" when goaded past endurance, but censors tried to prevent Rhett Butler from telling Scarlett O'Hara (despite considerable provocation) that he didn't give a "damn" what happened to her.

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Since that April evening in 1894, thousands of small, often-anonymous pressure groups, backed by the power of God, government and box-office, have decided what films you may or may not see. A quick look at the history of American film censorship is therefore important to those who would live in freedom. It might also explain a bit of the "why" for those who wonder why so many of their favorite books are turned into lousy movies.

Diane Alexander has recently begun an acting career after years as an applied anthropologist in the fields of public health and education. She has a B.A. and M.A. in anthropology and an M.P.H. in public health education.

PAST CENSORSHIP EFFORTS: or "Don't bend her backwards while kissing her; that's forbidden!"

EARLY EFFORTS

The first attempt to repress the movies was a humdinger by any standards. In 1908 the Mayor of New York City ordered his police to close *all* the cinemas in the city. His reasoning was similar to that of a Chicago judge who claimed (in another connection) that nickelodeons "cause, indirectly or directly, more juvenile crime coming into my court than all other causes combined."[2] (Sound familiar?)

Although the movies proved irrepressible, and the mayor's order was eventually annulled, censorship was already a way of life in many of the states. New York City and Chicago (as well as other locations later) demanded that all films be screened and licensed, and only those which were not considered "immoral," "obscene" or "improper" were allowed to be shown.

"Congress passed a law in 1912 barring any film from interstate commerce which showed a prize fight."

The misuse of the censorship power was already so great that Congress could pass a law in 1912 barring any film to interstate commerce which showed a prize fight. The law hoped to prevent "racial disturbances" after the black Jack Johnson won the heavyweight championship from the white Jim Jeffries.[3] The law wasn't rescinded until 1940.

In 1915 the Supreme Court favored censorship by expressly removing films from the protection of the First (freedom of speech) Amendment of the Constitution, stating that since films were made for

profit they were no more deserving of constitutional protection than carnivals and circuses. This pronouncement conveniently ignored, of course, the fact that newspapers and book publishing companies were also profitmaking, yet *covered* by the First Amendment! But then nobody said regulations had to be consistent.

In the years after World War I the morals of the country changed rapidly as the nation rushed exuberantly into the Jazz Age. Moviemakers, engaged at the time in a shifting and consolidating of ownership, happily produced quantities of films which would make money—and that meant movies with lots of sex and oodles of violence. The sophisticated life was shown as full of booze and seduction; the public lapped it up, with an astronomical 50,000,000 box-office admissions *a week* in the twenties.[4]

The pure-hearted, of course, went wild. State after state introduced censorship bills; in 1921 alone, almost 100 were introduced in 37 states.[5]

Desperately, in an effort to prevent more government censorship, the industry founded an organization in 1922, The Motion Picture Producers and Distributors of America. Hoping to gain by the abilities of an apt politician, they reached into President Harding's Cabinet for a director, Postmaster General Will H. Hays.

"Television pushed movies into making changes, because something different was needed to encourage people out of their homes and into expensive theaters."

Hays launched a public relations campaign to divert pressure from the industry, and then attempted (through his list of 11 "Don'ts" and 27 "Be Carefuls") to persuade movie-makers to tone down the objectionable in their films.

1927-1952

Hays' efforts helped for a few years, but by the end of the decade the hysteria against films was mounting again, brought about to a significant extent by three factors: (a) the advent of sound in 1927 (bringing as it did a closer re-creation of reality and startling the "pure" with its dialogues); (b) the profound social changes resulting from the Great Depression (which Hollywood reflected but was blamed for causing); and (c) publication of a series of studies criticizing the effect films had on children.

Out of this particular uproar arose one of the most powerful, if unofficial, censorship bodies this country has ever known, the Roman Catholic Legion of Decency, which roared mightily during the next decades to "protect members of the church." In Chicago alone nearly 500,000 Catholic women could be enlisted to campaign against "objectionable films."[6] Sometimes Catholics were told they "sinned" if they went to see particular films. The Legion's box-office clout empowered it to work effectively behind the scenes, contributing to the industry's efforts at "self-regulation."[7]

By this time, the mid-30's, ownership of the industry had consolidated itself into a few major studios. This was the "Golden Era" of Hollywood. A majority of the best talent in the world sat well-protected in little enclaves, with enormous amounts of capital at its disposal, and with an efficient distribution/exhibition system available to spread its creations effectively throughout the country and throughout the world.

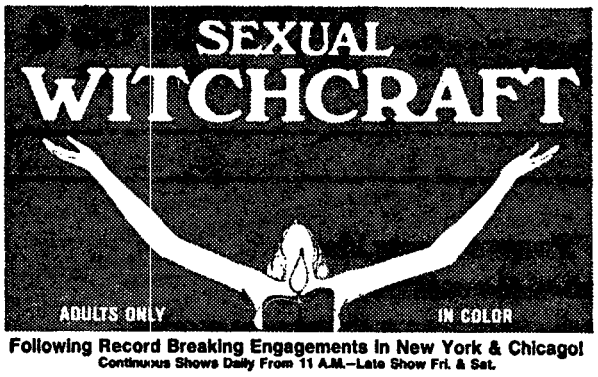
The list of "Don'ts" and "Be Carefuls," which had tried to keep producers in line in the 20's, had been turned into the Motion Picture Production Code, and Code enforcers haggled, harrassed and bargained with producers to remove from films what the public might find objectionable. The difference was—the Code had teeth. It was enforceable because its "voluntary" signatories were the centralized studios, which owned 70 percent of the first-run theaters in the country. They had agreed that no film could play their theaters without the Code Office's seal of approval.

Thus kept in check, everyone went about the business of making films on noncontroversial topics and in noncontroversial ways.[8] Of course, producers gleefully bent the Code at every opportunity (and they were sometimes ingenious in dreaming up ways), but basically the Code ensured a steady flow of "acceptable family fare." If "pre-self-regulation self-censorship" didn't work, "self-regulation" would. A list of the films changed by precensorship and self-regulation (some drastically and quite arbitrarily) would make staggering reading.

Prostitutes and adulterers had to repent

"sufficiently"[9]; murderers and robbers had to be punished "appropriately." If a man kissed a woman standing up, that was "romance," if she was bent backwards that was "lust" and, naturally, verboten. The Army, Navy and State Department had to be shown in a good light. You had to be careful how you treated ethnic, religious, professional and racial groups because Jews, Italians, doctors and blacks were all sensitive to unsympathetic treatment on the screen. Sometimes it seemed like the bad-guy had to be a nonprofessional white Anglo-Saxon atheist, or else a Greek—those two groups never seemed to complain about unsympathetic treatment.

Much as the Code acted to keep film entertainment at a sort of adolescent level, it still provided the producer with an amount of predictability, because he knew exactly where he stood before he finished his picture. Over a drink at the Tail O' the Cock, or some other movieland hangout, he could haggle with a member of the Code office for an extra killing in the film, or an extra inch of cleavage, or a less-ridiculous repentence for his leading character.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Once the Code's seal of approval was given, however, predictability was at an end—there was no guarantee that the film would pass the multitudes of censors outside Hollywood.[10] For the most part those censors remained unchecked by the courts and careened about the countryside acting, not only as guardians of our moral thoughts but, eventually, of our religious, social and political thoughts as well.

Films on "passing as a white person" were being banned to preserve the "peace and order of the community"; other films were banned on the grounds that they were "communist" or "sacrilegious." Some films were banned and no reason was given at all.

Censors often acted in complete indifference to decrees from the Supreme Court—censorship "in law" and "in fact" being two different things. In New York, counsel for the state censorship body could claim that a Supreme Court decision (condemning one of that body's actions) had "no bearing on New York's film censorship procedures .... We intend to continue just as we have in the past."[11]

Even if a banned film was eventually restored for exhibition in a community, the struggle would already have cost the owner months or years (and thousands of dollars) before it eventually could be resolved.

The chaotic atmosphere in which censorship took place can be partly illustrated by a quote from a lady censor in Pasadena who said, "We don't censor the movies. We are not censors. We just tell the exhibitors what pictures they can't show."[12]

1952-1973

Finally in 1952 the Supreme Court ushered in a new era in censorship, curbing the locals somewhat by granting to films the First Amendment protection it had previously denied them. The Court, however, still refused protection to films where obscenity was *the dominant theme.* An ideal of freedom was far from being reached, still it was a definite improvement over the melee before.

This new censorship leniency came upon the scene at a time when the movie industry itself was drastically changing, largely due to government decree.

In 1948 the major studios were ordered to divest themselves of their movie theaters or risk antitrust prosecution.[13] As the divestiture proceeded, the studios began to crumble. As distribution efficiency decreased, costs for film rentals began to rise and the supply of films to fall.

Producers, who were leaving the now-crumbling empires for independent endeavors, were not signatories to the Production Code; the movie houses, now separated from the studios, were no longer bound to show only approved films.

At the same time the Production Code Office appointed a new director, a man who refused to act as "the conscience" of movie producers, and became more and more lenient in his interpretations of the Code. All these factors contributed to an increasing permissiveness in film-making and exhibition.

"Within a week of the 1973 Supreme Court ruling, 6000 obscenity cases were under investigation by the FBI."

At the same time, television began to grow in popularity and to take over as provider of "family fare." In order to encourage people out of their homes and into expensive theaters, movies had to offer something television was unable to give.

Again sex and violence came to the rescue. The Code no longer prevented violent or sexy films from being made; people were more than willing to pay to see them; the Court gave film exhibitors more freedom in showing them. So!—Why not?

As might be expected, a howl of indignation began building in the country. Again the Motion Picture Producers Association tried to dissipate the pressure, this time (1968) by initiating an informational rating system to let parents know which films were appropriate for children and which were not (the *G, PG, R,* and *X* system).

A new Hollywood apprenticeship system soon developed. Many new producers would begin their film careers by making cheap X-rated films. They then used their profits to step up to R-rated films. When they were wealthy enough or well enough known to secure financing, they climbed clear up to the heights—the riskier *G* and *PG* ranks (riskier because that was where television so effectively competed).

1973

It should have been obvious, however, that classification would never stem the storm of protest. Pictures like *Deep Throat, The Devil in Miss Jones* and *Last Tango in Paris* were driving the indignant insane.

Into this fertile climate the Supreme Court's latest ruling arrived with a horrifying crunch: on June 21, 1973, in a 5-4 decision, the Court returned power to "the community" for setting standards in obscenity.

Justice Burger wrote, "The basic guidelines must be (a) whether the average person, applying contemporary community standards, would find the work, taken as a whole, appeals to the prurient interest, and (b) whether the work depicts or describes, in a patently offensive way sexual conduct specifically defined by the applicable state law and whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value . . ."[14]

Denied—Constitutional protection for the "consenting adult" (implicit in the rating system), allowing him to see whatever film he chooses;

Gone—the longstanding constitutional requirement that a work must be completely without redeeming "social importance" before being judged obscene;

Undefined—the "average person" and what his "contemporary community standards" are (leaving *that* up to 50 states to define, each in its own way);

Undiscussed—the source of the power which that "average person" was being given to impress his "contemporary community standards" upon other persons;

In—the test for "obscenity" as that which arouses in a viewer "sexual thoughts"—thoughts which arise naturally, all by themselves, in the average day of the average citizen without any outside help from Hollywood filmmakers.

The path was open for a million interpretations of the word "obscenity."

Within a week of the ruling, 6,000 obscenity cases were under investigation by the FBI.[15] *The Last Picture Show, Paper Moon, Carnal Knowledge* and *Last Tango in Paris,* as well as *PLAYBOY* and *PENTHOUSE* magazines, had been banned in various communities.

To top off the hysterical movement, Michaelangelo's Sistine Chapel frieze of "Adam and Eve" was made to suffer a typical fate: although for centuries it has been gazed upon by countless American teachers, librarians, schoolkids and little old ladies from Pasadena, it was now considered too shocking a sight for the eyes of our cinema audiences. In the film *S-s-s-s-s-s,* to be on the safe side with the censors, the producers decided to give Adam a fig-leaf![16]

Today more than ever before, no one knows in advance what the censors will determine; in fact, nobody knows who the censors are likely to be—a special, appointed board (made up of long-time political workers who need to be rewarded but gotten out of the way?), or the D.A.'s office, or a local court?

The result is a real heyday for the moral guardians of the nation.

For several months, work in Hollywood (except at Disney and the TV studios) ground to a halt; projects begun or contemplated were shelved or rewritten. If *Paper Moon* could be considered "obscene," what couldn't?

> *"The awful thing is that no one appears to be offering the prosecuted exhibitor support and sympathy."*

The Industry, already badly hurt by the long writers' strike, became more depressed than ever. Because the Industry is so diffuse and unorganized, we will probably never know how many thousands of dollars of effort were rendered useless, let alone the amount the Industry has had to spend on censorship fees (already costing moviemakers an annual $1,500,000 in the early 1960's[17]), and miscellaneous other censorship-related costs (for lobbying, overturning government decisions, paying fines and court fees, etc.)

In self-defense, the various relevant Associations (of motion picture producers, theater owners, adult movie producers, etc.) began running about Washington and the state capitols, trying to scrape together some consistency out of the shambles so that filmmakers would not have to deal with thousands of localities each with its own idiosyncracies.

(The mayor of one town claimed on radio that he was trying to ban Ivory Soap advertisements—after all, they show a baby's bottom!)

Dignified judges and censors started busily going to see all manner of "dirty" pictures.

The police began energetically raiding theaters across the country in the best-approved Prohibition style. (Maybe there's a chance "The Untouchables" will be updated on TV.)

The poor film exhibitor was put in a decidedly uncomfortable position. He could show a film, but could not know whether or not it was legally "obscene" until after he had been arrested and tried as a criminal. It was "obscene" only if the jury decided it was. To stack the odds a bit against the defendant, the Justice Department funded a $137,000 project to assist the prosecutor in his researches and keep him abreast of the latest rulings on obscenity.

If a film exhibitor should be brought to trial, he is likely to find himself partaking of a curious form of justice, as Vincent Miranda and Steve Hagen did in their trial in Beverly Hills, California. They were being tried as criminals for showing the allegedly obscene film *Deep Throat.* The proceedings went somewhat as follows:

1. One of the prosecutor's chief witnesses was a clinical psychologist who expertly opined that the film had "no social value" and could be "destructive." "Sexuality," he assured the court, "is best expressed in meaningful, committed relationships—to me, that means marriage."[18]
2. Not to be outdone, the defense brought in *its* clinical psychologist who stated that *Deep Throat* gives sex "a different kind of mystery—a mystery based on exploration." He further said he used similar films in his therapy sessions to educate bored married couples and give them sanction for exploring.[19]
3. In proving that the community did not accept films such as *Deep Throat,* the prosecution then introduced a public opinion poll which claimed, among other things, that the majority of Californians disapproved of having male or female sex organs shown in public films.[20]
4. The defense, naturally, countered with its survey: of 2,054 Pussycat Theatre patrons, 82.4 percent had remained unoffended by the film.[21]

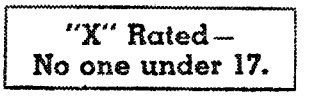
As the prosecutor summed up the case, he conceded that "450,000 persons may have seen the film"; however, he deprecated that figure by adding that the figure represents *only about* 6.4 percent of the population of the Los Angeles area." (Emphasis added.)

Deep Throat may *be* a silly film viewed mainly by the curious and neurotic, but it *was* one of 1973's biggest money-earners in Los Angeles. It was *the* biggest all-time attractions-at-a-single-theater in the town. Yet, in the view of the prosecutor, the film did not meet "community standards." By his measurements, *Gone With the Wind* would probably have had to be banned!

OUTLOOK

The future remains uncertain. Films are terribly vulnerable at the box-office because they must recoup their enormous expenses through wide distribution. If censorship cuts distribution, then producers of non-Disneylike films will have to make lower-budget features on shorter shooting schedules.

As the risks and costs of showing sex-related films increase, so will the pressure from organized crime. A group of leading pornography filmmakers already is claiming that exhibitors are being pressured to show bootleg prints of films copied and distributed by criminal elements, and that the "quality" porno filmmakers are being urged to cooperate, with a "subtle implication of muscle" added to encourage cooperation.[22]



It is also likely that censorship will creep outward from its obscenity base. An indication that this is already happening occurred on October 15, 1973 when the Supreme Court refused to review a case that challenged a Federal Communications Commission ruling threatening "to hold radio stations accountable at license renewal time for failure to understand and evaluate songs that glorify the use of drugs."[23]

MY CONCLUSION AND RECOMMENDATION:
or
"Support your local pornographer!"

So, after a period of relative freedom from censorship, we are back where we once were—with the silly, the bigoted, the uneducated empowered to determine what we will see. (This statement is *not* to be mistaken as a desire to have the wise, liberal and well-educated in their stead!) Film exhibitors, again, are not allowed to show whatever films they decide will bring them satisfaction or profit.

The awful thing is that virtually no one appears to be offering the prosecuted exhibitor support and sympathy. After all, who wants to stand up and cheer publicly, "Long live pornography!" It's as bad as being *for* littering or *against* Mom and apple pie!

So this article is my cheer—a request that, even if you have no decided urge to go straight out and see *Deep Throat* before the local theater is closed and its owner jailed, you still pay attention to what is

going on in the country relative to obscenity and censorship.

With the certain-to-increase costs for making, distributing and showing movies, censorship is vitally related to the pocketbooks of all movie fans. Also, since it is no different to censor movies for their ideas on morality than for their views on society or politics, censorship even of "obscenity" is antithetical and dangerous to freedom. We have got to tell "dear Uncle" that we don't need anyone protecting our morals—not even with so gentle a thing as a fig-leaf! ◻

NOTES AND REFERENCES

[1] The ban against doublebeds was actually in England, but since American films played so profitably there, no producer could afford to run afoul of English censors.

[2] Murray Schumach, *THE FACE ON THE CUTTING ROOM FLOOR: The Story of Movie and Television Censorship* (William Morrow & Co.), p. 16.

[3] Richard S. Randall, *CENSORSHIP OF THE MOVIES: The Social and Political Control of a Mass Medium* (University of Wisconsin Press), p. 13.

[4] Schumach, *op. cit.*, p. 18.

[5] Randall, *op. cit.*, p. 15.

[6] Schumach, *op. cit.*, p. 21.

[7] Neville March Hunnings, *FILM CENSORS AND THE LAW* (George Allen & Unwin Ltd.), p. 164 states his belief that private pressure groups such as the Legion would not be "enough to enforce the self-censorship system alone."

[8] Schumach quotes Tolstoy on a front-leaf of his book: "You would not believe how, from the very commencement of my activity, that horrible Censor question has tormented me! I wanted to write what I felt; but all the time it occurred to me that what I wrote would not be permitted, and involuntarily I had to abandon the work. I abandoned, and went on abandoning, and meanwhile the years passed away."

[9] That is why *Never on Sunday* had to play in "art houses," it never received a seal because its leading character remained cheerfully unrepentent about being a prostitute.

[10] Foreign countries, too, have a host of regulations that movie-makers must take into consideration. Schumach, *op. cit.*, p. 208, reports that scenes showing drinking alcoholic beverages were banned in India. Either a drinking scene would be cut from a film, or "a most unexpected scene was inserted before the drinking began. The insert showed a hand pouring milk into the glasses. This was supposed to create the impression that any merriment that followed the lifting of the glass to lip must be attributable to the innate good humor of the guests or to the milk."

[11] Ira Carmen, *MOVIES, CENSORSHIP, AND THE LAW* (University of Michigan Press), p. 122 quotes A. H. Weiler, "Movie Censorship Seen in New Light," *THE NEW YORK TIMES,* March 3, 1965, p. 35.

[12] Schumach, *op. cit.*, p. 203.

[13] *United States v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948)

[14] *HOLLYWOOD REPORTER,* June 22, 1973, p. 21.

[15] *HOLLYWOOD REPORTER,* July 2, 1973.

[16] *HOLLYWOOD REPORTER,* July 9, 1973.

[17] Schumach, *op. cit.*, p. 200.

[18] *VARIETY,* October 9, 1973, p. 1.

[19] *VARIETY,* October 11, 1973, p. 2.

[20] *VARIETY,* September 20, 1973, p. 1. This claim was based upon 1,500 questionnaires which the pollsters received after sending out 5,000.

[21] *VARIETY,* September 21, 1973, p. 7.

[22] *VARIETY,* November 6, 1973, p. 1.

[23] *VARIETY,* October 16, 1973, p. 1.

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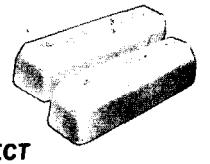

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Fighting Back Against Controls

Henry G. Manne

By now every member of this audience must have heard every argument the mind of man can conceive for and against consumer rationing, government allocation programs, excess profits taxes, and price controls, to cope with the so-called energy crisis. And everyone here knows the reasons commonly assumed to explain the crisis.

The blame goes, in approximately declining order of magnitude, to price controls; Federal Power Commission pricing policies for natural gas; various efforts both reasonable and hysterical to curb environmental pollution; oil pro-rationing traceable back to the New Deal; oil import quotas; Near East tensions and war; labor policies in the coal industry; disagreements with Canada stemming from increased nationalism there and protectionism here; fears of nuclear energy; the American consumers' taste in automobiles and household temperatures; and finally the near disappearance of the sperm whale.

Among the myriad solutions profferred for solving the problem, not too much has been said yet about nationalization of the energy industries, though the thought has been bruited about. Most discussions have focused on the imposition of further price controls and consumer rationing, and to a lesser degree on such ideas as government dictation of the output mix of petroleum refineries; mandatory closing of gasoline stations on Sundays; a federal speed limit; and apparently someone's slipping into our bedrooms at night, not to tuck us in, but to lower our electric blanket thermostats by six degrees; and on and on and on.

"Businessmen must take a good share of the blame for the present needless turmoil."

Finally, like a plaintive melody kept in the background by louder and shriller orchestrations, we occasionally hear a very different proposal, that the government forthwith cease in every respect to interfere with the functioning of the fuel market. Advocates of this last view are, however, generally considered to be naive theorists who vastly oversimplify the problem; do not understand the complexity of modern industrial America; and still prescribe 19th century economic nostrums for 20th century problems. After all, how could "doing nothing" ever cure a crisis of the magnitude we presently face?

Well, one answer to that question is that the crisis everyone is talking about does not really exist. That remark usually gains attention, not because it is readily recognized as a simple truth, which it is, but because it is generally considered to be a bad joke stated mainly for its shock value. Still, as was nicely explained by Professor W. Philip Graham in the *WALL STREET JOURNAL* of November 30, 1973: "Crises, as opposed to simple scarcity, result from market disruptions; and the *only* sector of society which possesses the power to disrupt a large market is the government." Professor Graham is correct. However, the government, plus the mass media and one hell of a lot of economic boobs, can also create an hysteria that many people

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are presently mistaking for a real crisis.

Of late, it is difficult to find a news story on the subject that is not headlined "Rationing Necessary to Cure Fuel Shortage," or words to that effect. T.V. commentators of erudite voice and visage and editors turned amateur economists tell us daily that some form of rationing is required to deal with the fuel shortage. A large and perhaps crucial segment of the literate public actually believe that the "cure" for a shortage is some form of government rationing. Well, there are a lot of things rationing can do—all of them bad. But one thing it can absolutely never do is to increase the total supply of any commodity.

I was encouraged recently by a headline over a recent column on this subject by Pulitzer Prize winning *WASHINGTON POST* columnist David Broder. That headline really laid it on the line. It stated simply: "Politicians Fooling Public on Crisis." But my optimism was short lived. It turned out that Mr. Broder was simply angry about Congress' delay in adopting what he considered urgently required legislation to ration gasoline and set prices. He thought that the members of Congress lacked the guts to adopt the politically unpopular but economically correct controls. Apparently, sometimes a little guts can be a dangerous thing.

Broder's column contained some nice, though obviously unintended irony. He stated that during World War II "despite all the horror stories today's politicians are telling, it appears that rationing was darned effective. Automobile mileage was cut in half in the first year the rationing plan was in operation. And despite a black market that involved widespread forgery of coupons and some blatant hijacking . . . the official estimates were that 95 per cent of the available fuel supplies moved through legitimate channels." I wonder how many of his readers noticed that in the absence of those same controls 100 per cent of our fuel supplies would have moved through legitimate channels. And incidentally, even that five per cent slippage amounted to a quarter of a million barrels of gas and oil a day. It is also interesting that Broder gives credence to "official estimates" of the amount of economic crime the government admitted to in the 1940's. I wonder how he treats the "official estimates" of crime surrounding Watergate and the 1972 election.

WHO GAINS?

It is interesting to conjecture about who the possible beneficiaries of our newest crisis discovery are, and I do not have reference to horse breeders or manufacturers of Franklin stoves. First, I suppose we might note that an administration in serious political straits can claim to have a firm hand on the government reins by dealing resolutely with a dramatic crisis. The traditional form of this argument was that governments risked wars to take the public's mind off domestic failures.

But, as some embarrassed administration critics recently learned, governments are not as likely today to play games about war risks as they may have been in the pre-nuclear era. But a nice little energy crisis can serve almost as well. It usually starts with a grave, short-notice, prime-time presidential warning on national T.V. He makes a call for patriotic, voluntary sacrifices by every citizen and inevitably ends by saying, "together, under my leadership, we will see this through," or words to that effect.

The next morning's papers, however, begin to carry subtle suggestions by third or fourth echelon officials about the possible necessity for regulation and controls. This is usually followed by a series of gradual escalations approaching real compulsion and the inevitable aggravation of the economic circumstances. At the moment, to its great credit, the administration in Washington is holding fast. But the pressures from Congress and elsewhere for fuel rationing and tighter price controls may soon become irresistable.

Other segments of government may be even better served by our new found crisis. The huge federal bureaucracy, fast becoming the most potent political force in the country, has developed sensitive antennae for programs that guarantee larger government payrolls. General controls during World War II required over a quarter of a million paid administrators, so control of the vastly larger present economy would promise several million new jobs at the least. After all, it is hardly imaginable that controls would or could be stopped merely with gasoline and fuel oil.

"The huge federal bureaucracy, fast becoming the most potent political force in the country, has developed sensitive antennae for programs that guarantee larger government payrolls."

Next we consider the Congress and a widely held belief that Congress in recent years has given up tremendous powers to the President. This belief created some minor consternation last week when the Senate adopted the National Energy Emergency Act of 1973, or, as some said, our economic Gulf of Tonkin Resolution. On paper, that bill gives the President the greatest peacetime economic powers one Act has ever conveyed. Some critics view this power as being given to the President at the expense of Congress, but the matter is not that simple, nor Congressmen that simpleminded. The President, and the few people close to him who actually follow his bidding, do not and cannot in fact administer these laws themselves. Such laws are administered by that veritable army of bureau-

crats over whom, as recent events make more clear than ever, the President has little or no real control.

Anyone who has observed Washington lobbying practices closely realizes that key Congressmen, especially the chairmen of important committees and subcommittees, exercise far more control over the working bureaucracy than do the evanescent presidential appointees far removed from the day to day work of the actual bureaucracy. Thus, I find it perfectly understandable why Congress continues to adopt regulatory laws that are allegedly to be administered by the executive branch. The advent of the regulated economy has lodged tremendous administrative or executive authority in the hands of key Congressmen, and it would be surprising if experienced politicians did not seize the opportunity provided them by a full blown energy crisis to secure more of this power.

The news media must surely bear a good part of the responsibility for creating our present crisis atmosphere. That is, after all, their stock in trade. Remember the *Maine?* But that presents me with a cheap shot, and anyway, who has not already heard that story. There are more interesting groups to consider.

Businessmen, yes, businessmen, must take a good share of the blame for the present needless turmoil. Much of the public, correctly or not, looks to the business community for popular guidance on economic issues. And so, when President Nixon proclaimed price and wage controls on August 15, 1971, in what may yet prove the most disastrous executive decree in American economic history, the public could surely not help noticing that the loudest approval for the move came from the business community. And what could possibly have confused the public more about the workings of unregulated markets and the profit system than all that damnably misguided talk by businessmen recently about corporate social responsibility? Well, that chicken really came home to roost in a hurry, for as Ralph Nader and John Kenneth Galbraith, among others, tell us, support of rationing and price controls is a crucial part of a corporation's social responsibility. Perhaps in the future the business community will not be quite so quick to truck with that devil.

IDEAS HAVE CONSEQUENCES

At any given moment, there exist a set of widely held intellectual views that largely determine which remedies experts will offer to solve real or imagined problems. In the "crisis" that was discovered in 1933, the then current ideology generated the various alphabet agencies and intensive, if often misguided, antitrust law enforcement. The race and environmental " crises" of recent vintage brought the corporate social responsibility idea to the forefront. Now two different pieces of current intellectual dogma propel the hue and cry for controls.

The first of these is the idea that there is a serious maldistribution of wealth in America. A little over a year ago that same notion played a role in the shift of control of the Democratic Party from those with relatively moderate economic views to those with a considerably more radical bent. The same idea, now apparently even more widespread, is playing a large role in today's crisis.

If you ask fairly intelligent people why they now favor price control and rationing of gasoline, a surprising number reply that these measures are necessary to prevent wealthy people from getting all of the gas, leaving the poor with none. Yet, there are few more pernicious economic suggestions than that we should allocate commodities on the basis of either some egalitarian right or a proven "need" for the particular goods. This argument contradicts the basic premise of a free society that individuals command resources by using the rewards they receive in the marketplace.

"Crises, as opposed to simple scarcity, result from market disruptions; and the only *sector of society which possesses the power to disrupt a large market is the government."*

Advocates of this notion argue that gasoline has a special quality that distinguishes the ethics of its distribution from that of other commodities. After all, they say, the poor must be able to get to their jobs. But how about housing, or clothing, or travel, or medicine, or education, or, for that matter, movies or soap? Should we destroy an incredibly efficient market distribution system that has served well the rich and the poor alike in order to accomplish some miniscule redistribution of wealth? And should we require that even that small subsidy to the poor to be taken in the form of gasoline; as would be the case with nontransferable ration coupons? How about the nondrivers among the poor, or those who must depend on deliveries? Nonetheless, to underestimate the strength of this argument in America today is to fail to understand much of the popular appeal of rationing and price controls as correct solutions to the energy crisis.

The second ideological argument for price controls, or for a special high tax on petroleum products, is that the large petroleum companies should not be allowed to make "windfall" gains because of the fuel shortage, though apparently the *government* should. Even apart from popular misconceptions about who actually would profit most in this situation, this attitude utterly fails to under-

stand the function of profits.

First and foremost, profits serve as a correct and efficient signal for the production of more goods. The reason why the amount demanded at a specific price increases, or the reason the supply lessens, is completely irrelevant to the economic function profit serves in increasing production. Penalizing profits simply prevents this miraculous device from performing its critical function efficiently. In passing, it might be noted that no one has proposed special tax relief for those industries, like automobiles, that are suffering "windfall losses" at this time.

DON'T SURRENDER

This brings me then to a conclusion that I rather think may offend some members of this audience or at least cause some painful soul-searching. I want to call on the business community of the United States to announce publicly and vigorously, both as individual companies and through associations such as this one, that they will not cooperate with the government beyond the legally compelled minimum in developing or complying with any control programs.

"I want to call on the business community to announce publicly and vigorously that they will not cooperate with the government . . ."

Many industrialists, particularly in the petroleum industry, have already been asked to serve on government allocation committees. I urge them to keep the public's interest and their own clearly in mind. Do not join these committees; do not give even the *appearance* of cooperation to those who would destroy the most successful economic system ever devised; and do not be misled by the belief that you can save a little of the pie by playing along with the government officials or by manipulating their proposals. Remember you have already been tried and convicted before these proceedings even began. For every such short term benefit you can measure in pennies, you and the public will ultimately experience losses measured in dollars and lives.

The threats of controls and higher taxes, the vilifications by politicians and the media, and the calls to patriotism and social responsibility are but the carrots and sticks of political bullies who can ultimately rationalize the last ounce of control over our private lives.

If you have any faith in the economic and social miracle that is the free market system, use every legal means at your command to vex, confuse, delay, undermine and avoid every regulation adopted or proposed by Congress, the administration, and the bureaucracy. Instruct your lawyers and your accountants to stay as narrowly within the letter of the law as they possibly can while still keeping you out of jail. You are not *legally* obliged to follow the spirit of a law and not *morally* obliged to follow the spirit of a law that is without any redeeming economic or social justification.

Force the government into litigation at every turn. Whenever possible, on constitutional or other colorable grounds, seek individually or in a class action to enjoin the enforcement of price controls and allocation regulations. Force the government to prove the constitutionality of every one of these intrusions, and seek declaratory judgments when there is the slightest possibility of confusion in the interpretation of regulations.

Finally publicize as widely as possible the inevitable inefficiencies, mistakes, and human miseries that will develop with these controls. They are and will be all around us, and no one will have to look far for examples. That price controls prevented production of the equipment necessary to produce more oil refining capacity is the kind of thing that the public should be made to understand. The public should not be allowed to believe that racketeering, black markets, favoritism, misallocations, delays and inconveniences are sacrifices they must endure in the nation's interest. These are, after all, unnecessary costs resulting from economic stupidity or political knavery.

Paul McCracken has characterized as one of the "more unfortunate aspects of rationing . . . its adverse effect on public morality. . . . Thus," he said recently in the *WALL STREET JOURNAL*, "those with 'flexible' standards of morality, or who have political pull, or who can work some other angle, will do relatively well, while the ordinary decent citizen will wind up with the dry gasoline or oil tank." With all deference to Dr. McCracken's perfectly correct prognosis of what will occur, I must disagree with his characterization of the effect on public morality.

It has often been pointed out that the Russian system of central economic planning could never have reached its present production levels were it not for a broadly functioning and officially ignored black market. That misnamed free market has, of course, kept many a Russian alive and happier than he would otherwise be. The same may now become true in America.

Businessmen should help the public understand that morality, in the case of arrogant, intrusive, totalitarian laws, lies in the barest possible obedience and in refusal to cooperate willingly beyond the letter of the law. The business community should have the courage to inform the *public* that the stakes are very high and that *they* are the potential victims. ◻

We have already experienced fuel and power blackouts . . .

ARE YOU PROTECTED AGAINST A FOOD BLACKOUT?

OBTAIN FULLY ADEQUATE AND TASTY MEALS AT 46¢ EACH, WHILE ACQUIRING, AT NO EXTRA COST, FOOD INSURANCE AGAINST THE INCREASING POSSIBILITY OF A REAL FOOD CRISIS

Consider the power black-outs, fuel shortages, accelerated depreciation of the dollar, gold at the $100 per ounce level, and sky-rocketing food prices. Who expected this to happen with such magnitude so soon?

Consider also this: In view of deteriorating U. S. military, economic, and political conditions, it is likely that this country faces a catastrophic crisis in the near future. Nothing effective is being done to change the trend, and matters will get much worse before there is a reversal.

Therefore, as a measure of insurance, it is time to stock up on gold *coins (if you have not already done so)*, plus a food supply which can be used in case of emergency, as well as for every day utilization, should nothing adverse occur. With passing time, acquisition of such a supply is becoming more costly.

Last year the U.S. had an overabundance of food. This year much of our food is in Russia, while some of our domestic prices (including prices of storable items such as wheat) are 3 times higher than previous to the give-away.

We have seen that farmers have killed newly hatched chickens, for the feed has become too expensive due to the "sale" to the Soviet Union. And the Secretary of Agriculture assured us that food rationing is unlikely. (Could anyone foresee the need for such "assurances" in 1972?)

During the last five years, we emphasized acquisition of gold coins as a security investment in our advertisements in the Wall Street Journal, Barron's, Human Events, American Opinion, Reason, and other publications. Those who bought these coins through us already realized great benefits. Now we are advocating acquisition of a ready reserve food supply <u>also</u> as a security investment. Reflection on the past and on what politicians have done and are doing to this country, show this to be necessary. (Thus, while in summer of 1973 it became known that our domestic granaries were almost depleted, a huge U. S. food sale to Red China, on extremely dubious terms, was announced. The food is to come from future crops, as there were practically no reserves left for use of the Red China transaction after shipment to the Soviet Union.)

Nearly all grocery stores now sell packaged and canned foods. However, these items are not designed for lengthy storage and quickly lose freshness and taste, as well as important vitamins. In addition, grocery store items take up considerable space and are heavy. Nor have the drying methods used for thousands of years for food storage proved satisfactory. Their appeal, even before becoming completely stale or spoiled, was always far from desirable. To correct this, the so-called "Low-Moisture" methods were developed about 23 years ago. Their value in providing fully adequate and <u>attractive</u> meals has since then been well proven. However, new developments in this field have improved these products even further. Low-moisture foods were used by the climbers of Mount Everest, and were taken along by our astronauts to the moon. Low-moisture foods are also completely practical and easy to prepare for normal, everyday household consumption. Yet, they last up to 15 years and longer without requiring refrigeration, while their reduction in weight and space of 75% (compared with grocery store items) makes it possible to keep a one or more year supply in a house or garage.

Our Salt Lake City processor has over 20 years of experience (it is the oldest in this field) in providing balanced, low-moisture foods which excel in nutrient, vitamin and mineral contents, as well as taste. The low-moisture methods used to achieve this require greater effort than the usual processes, but results—in terms of taste, nutrients, and longevity, as well as bulk and weight—are worth it. Moreover, cost to the consumer is surprisingly low. Fully adequate, appealing meals are provided at 48¢ each.

Expert design of the ready reserve food supply eliminates guess work as to what to store. This can be of utmost importance to health, especially if a food crisis persists longer than a few days. Fruits, vegetables, eggs, cheeses, grains, sugars, proteins, cooking aids, and a wide variety of other foods, certain to preclude monotony, are provided, together with a culinary book containing outstanding recipes, ideas, and suggestions for best utilization. You may use these foods in your everyday menu, while, at the same time, keeping enough in reserve against a food "black-out." (We can replenish your used up supplies as they are consumed.)

The desired results are achieved by: 1) dehydration of the food; 2) placing the dehydrated food in internally enamelled cans (of which 116 are the regular size #10 cans, each being slightly smaller than a gallon, while 8 are half-size #3 cans); 3) evacuating the air from the cans, replacing it with an oxygen free atmosphere and sealing the cans; 4) packing the cans in cartons of 7-3/8" by 12-3/4" by 18-3/4" dimensions. 20 such cartons weighing 600 pounds and occupying 2/3 of a cubic yard (you can fit them all in your car) provide a 12 month supply for 1 adult person at 2,450 calories per day. (The supply is so designed that either families or single or several adults may use it. While it may last 6 months for 2 adults, the proportional time decrease for a family with small children is less than for adults. Thus, for a family of 6 consisting of a father, mother, and 4 children aged 2 to 14 years, the supply will last longer than 2 months. This is because children consume less than adults.) Opening a sealed can will not cause spoilage for several months, thereby enabling full use of its ingredients.

The following is a list of the contents of the augmented yearly supply described here (except as indicated, all cans are #10 size):

FRUITS: After restitution with water, the same as 103 lbs. of fresh fruits, consisting of apples, peaches, and fruit galaxy of apricots, grapes and cherries, providing 521 of 3 ounce servings. 6 cans.

VEGETABLES: After restitution with water, the same as 268 lbs. of fresh vegetables, consisting of carrots, green beans, sweet corn, tomatoes, cabbage, potatoes and peas. This provides 500 of 4 ounce servings. 12 cans.

SUGAR: 36 lbs. of granulated sugar. This is more than sufficient for normal use of one year. 6 cans.

MILK: After adding water to the powdered milk, the yield is 230 quarts of non-fat milk. At normal consumption of ½ quart per day, this is sufficient for more than a year. 12 cans.

CONCENTRATED VEGETABLE PROTEINS: This category provides a meat substitute, equivalent to the protein content of 100 lbs. of lean, fresh

meat. Also 186 servings of bacon-flavored bits—excellent tasting. 12 cans.

GRAINS: Sufficient flour (or unground whole wheat, yielding the same amount) to provide 250 lbs. of rich, wholesome bread, or any other items the wheat may be used for. Also: 228 of 4 ounce servings of pinto beans; 84 of 4 ounce servings of quick cooking oats; 116 of 4 ounce servings of elbow macaroni; 96 of 4 ounce servings of yellow cornmeal; 279 of 4 ounce servings of rice. 42 cans.

EGGS: 384 eggs (32 dozen) in powdered form, providing more than one egg per day for a year. 4 cans.

CHEESE: 128 of one ounce servings of cheese. 1 can.

GELATIN DESSERT: 256 of 4 ounce servings of gelatin dessert. 2 cans.

BREAKFAST DRINK: 320 of 4 ounce servings of grape, grapefruit, orange, or pineapple drinks. 2 cans.

SHORTENING: 39 pounds. 12 cans.

MARGARINE: 10 pounds. 3 cans.

SUPPLEMENTS: Cornstarch sufficient to make 96 pounds of pies, or other uses; minced onions to provide 384 one ounce servings; beef bouillon for 218 servings of 6 fluid ounces each; chicken flavored and beef flavored gravy for 384 of 2 ounce servings; iodized salt sufficient for more than one year; adequate baking powder and yeast. 10 cans, of which 2 are #10 size (the same as all others listed above) while 8 are half-size #3 cans.

TOTAL: 116 #10 cans, 8 #3 cans; all packed in 20 cartons. (NOTE: none of the items listed here require special care or refrigeration for long term shelf life. However, yeast and baking powder will stay fresh longer if kept in cold storage.)

It can be seen that the READY RESERVE supply provides highly nutritious food, with a high protein, high mineral and vitamin content, sufficient for maintaining good health; and that the 2,450 calories per day, thus furnished for one year, are well balanced. While the food is easy to prepare and use, the book, CULINARY CAPERS, which comes with the supply, contains beneficial instructions and suggestions.

Cost of the yearly supply is **$528** plus shipping charges (varying between $30 and $80 depending on location). This is a bargain even if we never have a food "black-out." Thus, if nothing else, the ready reserve supply serves as a hedge against burgeoning prices. But, should a food crisis occur, the supply can be vital for sheer survival.

Also available: A 5 month READY RESERVE supply providing all necessary items for a 5 month period. This supply comes in 8 cases and weighs about 220 pounds. Cost is **$275** plus $20 to $50 shipping charges. The variety and quantity is smaller than for the yearly supply, but fully adequate nourishment is provided for a 5 month period.

A WATER PURIFIER, good for approximately 100 gallons, is included at no extra cost for the yearly as well as 5 month supplies. This is an exceptionally excellent item, removing contaminants (including radioactive particles) down to one micron (40 millionths of an inch) in size, thus providing pure, usable water, even from highly polluted sources.

Because of worsening inflation, we can expect further price increases. Therefore, we urge you not to delay even one day, as our politicians are not making things better for American consumers. If your order is received within 2 weeks after reading this notice, we will send free of charge as a bonus the two following important books: 1) PASSPORT TO SURVIVAL; 2) FAMOUS MORMON RECIPES.

Our emphasis here on food is not intended to downgrade the importance of gold coins. If we learn from history, we can expect the dollar to go the way of the German Mark in 1923. Much worse monetary conditions are probably coming, and it is not too late to begin or enlarge a supply of gold coins. We offer: U. S. $20 gold coins at $205 each; Mexican 50 Pesos at $175 each; Mexican 20 Pesos at $76 each; Mexican 10 Pesos at $39 each; British Sovereigns at $46 each. Call for latest prices and quantity orders. Fully insured coin shipping charges paid by us.

All U. S. gold coins in uncirculated condition. All foreign gold coins in extra fine to uncirculated condition. Many other gold coins also available, plus uncirculated and circulated silver dollars and other silver coins.

IMPORTANT NOTICE:

Many persons wishing to have food insurance for themselves and/or families and short of cash, have asked us if the food can be obtained on a time payment basis. Nevada Coin Exchange is normally not receptive to sell on a basis which places customers more in debt. But, food is more vital for survival than any other purchasable item. Therefore, we made arrangements with Master Charge and BankAmericard to enable time payments (or cash pay-outs) with them for food. If you wish to use this service, please fill in your Master Charge or BankAmericard number as indicated on the order form.

FULL GUARANTEE:

If unsatisfied, you may return coins and/or food ordered to Nevada Coin Exchange within ten days for a complete refund of your purchase, plus a complete refund of any shipping charges.

ORDER FORM

PLEASE SEND:

1. A _____ year(s) supply of READY RESERVE FOOD at **$528** per one year supply, or a 5 month supply of READY RESERVE FOOD for **$275** together with the book, CULINARY CAPERS and water purifier. If I ordered within 2 weeks from reading this notice, you are also to send me free of charge the books PASSPORT TO SURVIVAL, and FAMOUS MORMON RECIPES. I may obtain at request free information on hand or power grinders, water purifiers, breadmixers, survival and/or recipe books, and other supplies.

2. Gold coins (indicate type and quantity desired):

_____ pieces of U. S. $20 gold coins at $205 each, containing .9675 net Troy Ounce gold per coin.

_____ pieces of Mexican 50 gold Pesos at $175 each, containing 1.2056 Troy Ounce gold per coin.

_____ pieces of Mexican 20 gold Pesos at $76 each, containing .4823 net Troy Ounce gold per coin.

_____ pieces of Mexican 10 gold Pesos at $39 each, containing .24115 net Troy Ounce gold per coin.

_____ pieces of British gold Sovereigns at $46 each, containing .2354 net Troy Ounce gold per coin.

(Long distance phone charges reimbursed by us if order above $100 is placed.)

TOTAL FOR ORDERED FOOD AND/OR COINS $ _____

If unsatisfied, I may return coins and/or food ordered to Nevada Coin Exchange within 10 days for a complete refund of purchase, plus a complete refund of any shipping charges.

NAME _____ ADDRESS _____

CITY _____ STATE _____ ZIP _____ TELEPHONE _____

☐ Master Charge Number

☐ BankAmericard Number _____

(Enter only if you wish to use credit card)

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NEVADA COIN EXCHANGE (a subsidiary of Carson Development Corporation)
P. O. Box 485, 1104 West Sunset
Carson City, Nevada 89701
Telephone: Area Code 702, 882-2483

All food and coin prices subject to change without notice.

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NOTE: Coin orders shipped via fully insured mail (paid by us) from Carson City, Nevada. Food orders shipped from Utah via truck. Food shipping charges (varying from $20 to $80 depending on supply ordered and distance) payable by purchaser on receipt of order. We guarantee to pay the difference if food shipping charges exceed $80 for the yearly supply, or $50 for the 5 month supply within the 48 contiguous U. S. states. Shipping charges to the more populated parts of Alaska and Hawaii (i.e. Anchorage, Juneau, Honolulu, Hilo, etc.) are approximately 35% higher.

The A.C.L.U. & Involuntary Commitment

Response

Aryeh Neier

I have long believed that Dr. Thomas Szasz performs a great service for civil liberties by his opposition to the incarceration of persons accused of mental illness. However, I think that the service he performs is substantially diminished by his reckless assaults on those who do not agree with him on every matter. His attack on the ACLU ["The ACLU's 'Mental Illness' Cop-Out," *REASON,* January 1974] is a case in point.

Here are some examples of his recklessness:

(1) Dr. Szasz notes that Ramsey Clark and Karl Menninger are officers of the ACLU's National Advisory Council. He then proceeds to attack their views on mental commitment. The reader is meant to infer that their views are those of the ACLU.

In fact, while Mr. Clark and Dr. Menninger are members of our 80 person National Advisory Council, the views on mental commitment attributed to them by Dr. Szasz are not those of the ACLU. The ACLU's policies are determined by an 80 member Board of Directors. In the more than a decade that I have worked for the ACLU, I do not recall any occasion in which either Messrs. Clark or Menninger participated in the very extensive discussions on mental commitment that have taken place within the ACLU.

The ACLU National Advisory Council and Board of Directors are both bodies composed of people with diverse points of view. What any of those people say in their private capacities is not necessarily to be taken as the position of the ACLU. If, for example, Dr. Szasz happened to serve on the ACLU Board or Advisory Council, I would hope that his support for Richard Nixon in the last presidential election were not taken as the position of the ACLU and I hope it is not taken as the position of any association with which Dr. Szasz is affiliated unless the association itself has taken the position.

(2) Dr. Szasz refers to Charles Markmann's book on the ACLU, *THE NOBLEST CRY,* as an "official history." He then proceeds to quote this "official history" as the gospel on ACLU activities.

It is not an "official history." In fact, when Markmann's book appeared, I wrote an unflattering review of it objecting both to its philosophy and to some slipshod treatment of factual material.

Aryeh Neier is Executive Director of the American Civil Liberties Union.

(3) Dr. Szasz says that the ACLU has participated in drafting legislation for the civil commitment of persons accused of being mentally ill. What he does *not* say is that the ACLU role, in every instance with which I am familiar, is one of trying to limit civil commitment by seeking more precise criteria for commitment and by establishing due process protections for persons facing commitment.

There is a school of thought which believes that one legitimizes institutions which should be eliminated by encumbering them with procedural safeguards. I have some sympathy for that point of view. However, reading Dr. Szasz, one would infer that the purpose of ACLU participation in drafting mental commitment legislation was to put more people in institutions. The opposite is true.

(4) Dr. Szasz attacks the ACLU for being enthusiastic about *Robinson v. California* (1962). He then tells us that in *Robinson* the U.S. Supreme Court ruled that "addiction is a disease, whose cure is imprisonment in a mental hospital." The decision says no such thing. Rather, it says that addiction is a disease and that to put some one in prison for being sick is cruel and unusual punishment in violation of the Eighth Amendment. The Court noted in passing that compulsory treatment of addiction *might be* constitutionally valid.

The ACLU applauds the *Robinson* decision for its holding that the status of being an addict cannot be criminally punished. However, the ACLU is opposed to involuntary civil commitment of narcotics addicts; deplores the dictum in *Robinson* which tolerates civil commitment; has challenged civil commitment in court; and has testified and lobbied against civil commitment of addicts before state and national legislative bodies. I personally have testified for the ACLU in flat opposition to civil commitment of narcotics addicts before at least 8 legislative hearings in the past 7 years.

(5) With respect to alcoholism, the ACLU has opposed both criminal sanctions and involuntary commitment. While we have supported the creation of rehabilitative facilities, we have insisted that they be voluntary.

(6) Dr. Szasz states that "the ACLU is actually an ideological, and perhaps in part also an economic, captive of the 'liberal' medical-psychiatric establishment . . . ." I cannot imagine what he means by that statement. It seems to be impossible for Dr. Szasz to believe that anyone does not share all his

(continued on page 30)

Reply

Thomas S. Szasz

In my article, I wrote that the ACLU has supported, and continues to support, involuntary mental hospitalization. I did not write that every one of the 80 members of the ACLU's Board of Directors, or that Mr. Neier himself, personally support psychiatric incarceration. By asserting that some members of this Board and that Mr. Neier himself oppose such incarceration, Mr. Neier makes it appear as if I were wrong and "reckless." By this sort of reasoning, one could equally well assert that the American Psychiatric Association opposes involuntary hospitalization —when in fact it does not—because some of its members oppose it.

Further examples of my "recklessness" are that I failed to mention that the ACLU is seeking "more precise criteria for commitment" and believes that psychiatric incarceration should be used only as "a last resort." Seeking criteria for commitment implies that commitment is a morally and legally valid imposition of loss of liberty. As to advocating commitment only as a "last resort," the American Psychiatric Association also advocates it only as a last resort. I don't know anyone who advocates it as a first resort. Here, then, Mr. Neier himself supplies the most damaging evidence in support of the thesis of my article—namely, that the ACLU is intimately wedded to the prevailing psychiatric ideology which seeks to legitimize and regulate procedures for depriving persons of liberty who have been neither charged with nor convicted of any offense whatsoever.

What I have called the ACLU's "betrayal of civil liberties for mental health" is further illustrated by Mr. Neier's attempt to justify the ACLU's support of civil commitment in *Wyatt v. Stickney* on the grounds that the victims of psychiatric incarceration "should at least get showers, decent food" and so forth. No decent person can oppose such amenities for the victims of any kind of oppression. But Mr. Neier is working and writing for the American Civil Liberties Union, not the American Red Cross! I can only regret that Mr. Neier and the ACLU cannot see or do not agree that when a person is unjustly deprived of his liberty, the moral mandate of an organization ostensibly devoted to the protection of civil liberties is to fight for his release from captivity, rather than for his comfort in it; and that when it fights over the conditions of his confinement, it inevitably authenticates the validity of that confinement. When Japanese-Americans were confined in "relocation camps," was it the duty of the ACLU to fight for their freedom, or for their showers?

Perhaps it would have been more accurate if I had described *THE NOBLEST CRY* not as an "official history" of the ACLU, but as an "adulatory history" of it. However, the facts I have quoted from this book are not is dispute. Is this, then, "recklessness" on my part, or is Mr. Neier's mentioning it—not to mention his mentioning my support of Mr. Nixon in 1972—an attempt to discredit me when he cannot dispute my evidence?

Mr. Neier also cites my claim that "the ACLU is actually an ideological, and perhaps in part also an economic, captive of the 'liberal' medical-psychiatric establishment," and says that he "cannot imagine" what I mean by it. Had he read the next sentence, he would have seen just what I mean by it. It reads: "In other words, the ACLU is, in effect, a lobby for the American Medical Association and the American Psychiatric Association: it is in the interests of these medical guilds that ever-more human conditions and problems be defined and treated as diseases—and it is this interest that the ACLU serves." This, then, is what Mr. Neier's rhetoric of "recklessness" comes down to: I am reckless toward the ACLU in making this perfectly valid charge against it, but he is not reckless towards me in calling the first half of my criticism meaningless, omitting the second half, and topping it off with a gratuitous slur on my character.

Repeatedly, Mr. Neier refers to what he thinks and what he did. But my essay was about the ACLU, not about Mr. Neier. I am glad that Mr. Neier's view on psychiatry and civil liberties are closer to mine than to the ACLU's. This hardly invalidates my criticism of the ACLU. But it raises a question: Why does Mr. Neier write this letter for the ACLU?

It seems to me, in short, that what I have written about the ACLU is not reckless but embarrassing. The ACLU has no hesitation in publicizing embarrassing facts about persons whose political policies it opposes; I have none in publicizing embarrassing facts about the ACLU whose psychiatric policies I oppose. Is this recklessness on my part, or evidence that the ACLU can dish it out but can't take it? ◻

Thomas S. Szasz is Professor of Psychiatry at the State University of New York at Syracuse.

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(continued from page 28)

views unless something like financial corruption is involved.

(7) Dr. Szasz refers to an Alabama case, *Wyatt v. Stickney.* That case established a constitutional right to treatment for persons incarcerated in mental hospitals.

The ACLU decision to enter that case united two strands of thought that exist within the ACLU. Those who oppose all involuntary incarceration supported the case in part because it would make incarceration on grounds of mental illness expensive for the state and, thereby, reduce the number of persons incarcerated. They were also concerned that as long as involuntary incarceration has not been abolished, inmates of institutions should at least get showers, decent food, changes of laundry, and the like.

Support for the case also came from those who believe that involuntary incarceration can, in certain circumstances, be justified by dangerousness to self and/or others. They believed that if people are incarcerated it must be with treatment reasonably designed to lead to their being freed. In addition, they share the elementary humanitarian concern that people held in institutions should be adequately fed, bathed and clothed.

These two points of view on "right to treatment" are both very well represented on the ACLU Board of Directors. Despite years of debate on the issue, neither side has been able to command the support to enable it to make its point of view *the* ACLU's definitive policy. I am very much troubled by this, as are the members of the ACLU Board. Unfortunately, I do not see the deadlock being broken at an early point.

However, both sides in the ACLU agree that involuntary commitment should be *at most* a last resort. In practice, it is generally a first resort. Therefore we have been able to engage in wide-ranging opposition to involuntary commitments. They virtually never meet the standards of even those on the ACLU Board who would support some forms of commitment. I am pleased with what the ACLU has been able to do against involuntary commitment, though I hope we can do a lot more. ◻

THE MIRACLE

The noontide was too perfect: there the sheaves
Of rice-straw stood; the breathless trees
Folded their shadows up into their sleeves . . .
Still even the sleepy hum of autumn bees . . .
Some miracle, I knew, but come to birth . . .
An apple dropped to earth.

Yone Noguchi

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editorial

THE STATE AS BOOKIE: GOVERNMENT LOTTERIES AND "VOLUNTARY TAXATION"

"In a fully free society, taxation—or, to be exact, payment for governmental services—would be voluntary."—**Ayn Rand,** "Government Financing in a Free Society," in *THE VIRTUE OF SELFISHNESS* (New American Library 1964), p. 116.

"[A state run lottery is] the most painless form of taxation there is."—California State Assembly Speaker **Robert Moretti,** a leader in the campaign against Governor Reagan's tax-limitation initiative last November.

Ten states in the United States have gone into the lottery business since New Hampshire began state-lottery operations in 1964. Although all of the original 13 colonies used lotteries to raise revenue, until the adoption of New Hampshire's lottery ten years ago, no state lotteries had been conducted since Congress shut down a corruption-riddled Louisiana game in the mid-1880's. A lottery measure has recently won approval in the California Assembly and, if it passes the California Senate, will be presented to voters for approval in the November general election. According to the *LOS ANGELES TIMES,* in addition to politicians such as Moretti, "The biggest private supporters of a California lottery appear to be East Coast lottery consultants and lottery equipment manufacturers." Besides California, some 14 other states are considering establishing lotteries. Moreover, New York, which started a state lottery in 1967, has since legalized the operation of City-run off-track horserace betting parlors in New York City (the City gets a share of the take), and New York Governor Malcolm Wilson proposed in January that the state legally go into the "numbers" racket to raise additional revenue.

Proponents of the state as bookie ("Support your local state lottery") assert that legalized gambling is a good way to raise government revenue on a voluntary basis. In her essay, "Government Financing in a Free Society," Ayn Rand has suggested that a government lottery is one possible method of voluntary government financing in a free society. Ms. Rand also has proposed voluntary payment for "proper" governmental services (the police, armed forces and law courts) by means of an insurance premium on private contracts to secure the right to seek redress in a court of law; if the premium were not paid, such "contracts would not be legally enforceable." Ms. Rand's contract-insurance proposal is reminiscent of that set forth by Adam Smith in *WEALTH OF NATIONS* (Book 5, "Of the Revenue of the Sovereign or Commonwealth") ("The whole expence of justice too might easily be defrayed by the fees of court.").

It seems timely to consider the subject of taxes in *REASON's* April issue. Much is said these days about tax "reform." What is the libertarian view concerning taxation? And what stand should libertarians take toward current proposals for state entry into the lottery business?

In a free society, no person or institution —public or private—has the right to institute the use of physical force against another. It is basic that, in Rand's words, "the imposition of taxes does represent an initiation of force." Taxation is repugnant to the principle of free choice—it is inherently coercive, and is nothing more than a means of forcing people to pay for programs which they oppose. "Indeed," observes Murray Rothbard in *FOR A NEW LIBERTY,* "it would be a useful exercise for nonlibertarians to ponder this question: *How* can you define taxation in a way which makes it different from robbery?"

What about state lotteries? From a libertarian perspective, one must first inquire: Does the state-lottery measure propose to legalize only state-run gambling, leaving other gambling illegal? Presently, virtually every state in the United States has laws against private betting. However, instead of advocating the decriminalization of gambling, proponents of state lotteries have argued that the government lottery would make inroads on illegal gambling by hurting the illegal operations—by taking their customers away. Yet laws against gambling are not only plainly unenforceable (when is the last time you know of someone who made an "illegal" bet on a football game or played poker for money?), they lead to police corruption (the film *SERPICO* provides a graphic view of this) and are objectionable as patently improper attempts to regulate consensual adult conduct (persuasion, not coercion is the libertarian way to try to change another's consenting private conduct).

Despite the fact that gambling has remained illegal where state lotteries have been instituted, a *LOS ANGELES TIMES* survey—conducted across the United States last November—found that state lotteries not only have not reduced illegal gambling, but they have a high cost of administration and are "an unstable source of money which require constant promotion and variation to sustain public interest and have little meaningful impact on a state's total income." Indeed, there is no reason to expect the state to manage a lottery any more profitably than, say, the postal service. But the fact that state lotteries are not consistent big money-makers when private gambling is *outlawed* raises a doubt about the efficacy of a government lottery as a revenue-producing device in a free society, where all private consensual conduct—including gambling—will be allowed.

Moreover, the advocacy of a state lottery to voluntarily finance government raises a further question. If the purpose of the lottery is to *voluntarily* raise revenue for governmental services, why single out a *lottery?* New York State Governor Wilson already urges a state-run legal "numbers" game. But why stop there? Why not state-run brothels? Or a state movie theater featuring such high-grossing movies as *DEEP THROAT?* Or a state-operated "Nixonland" amusement park? Or even state-sponsored "contract insurance"? In short, is there any reason to believe that a state-run business—lottery or otherwise—will show a profit in competition with private enterprises?

What would happen if the means adopted to *voluntarily* finance government were unsuccessful? Would this lead to the withering away of the state? In *POWER AND MARKET,* Murray Rothbard discusses the workability of private-enterprise supply of necessary "governmental" services, supported by the voluntary payment of the customers for such services. Rothbard quotes the conclusion of "two of the very few economists who have conceded the possibility of a purely market defense": "If, then, individuals were willing to pay sufficiently high price, protection, general education, recreation, the army, navy, police departments, schools and parks might be provided through individual initiative, as well as food, clothing and automobiles." Hunter & Allen, *PRINCIPLES OF PUBLIC FINANCE* (Harper & Bros. 1940).

Dr. Rothbard's views on "free-market justice" are well known to *REASON* readers (see, e.g., March and May 1973 issues). In *POWER & MARKET,* Roth-

(concluded on page 49)

money $

DAVIS E. KEELER

A PESO FOR YOUR THOUGHTS

Are you worried about where to put your money now that the U.S. is acting like a banana republic? Would you be interested in a nearby, stable, conservative country with a hard currency, where you can get 11½ percent interest on accounts which are for all practical purposes guaranteed by the government? And, while we're at it, a country which also protects the confidential nature of bank records and has no treaty arrangements with the U.S. for cooperation on tax matters? Would you believe, *Mexico?*

As we have noted before in this column (e.g., "Free Money," *REASON,* February 1973), the combination of inflation and taxation pretty well wipes out any return on most fixed interest investments.

Bleak as this may be, there are investors who, for one reason or another, have to go into fixed interest investments. For those investors fortunate enough to have blocks of $100,000 to move around, there are a number of opportunities to earn a decent return, opportunities which are generally denied the small ($1000 – $5000) "retail" saver. Part of this results from the economies of scale in handling deposits, but the determining factor is the government policy which restricts interest payable to small savers so as to channel these funds into savings and loan associations to help provide below-market interest mortgages to keep the home building industry going.

Unlike the U.S., Mexico does not have a prosperous middle class to burgle, so they have to attract foreign money at market rates in order to finance their industry and agriculture. The vehicle for this financing is the "financiera," an institution which purchases funds from investors and re-loans them out to business firms or large farming operations. Financieras have two types of deposits: "Pagares," which are term certificates, and "Bonos," which are demand deposits.

Pagares currently pay 11½ percent gross on one-year certificates, with shorter term paper paying less. Bonos pay nine percent. These rates are current as this article is written but may change with market conditions, although historically these rates have been pretty stable. These are *gross* yields, before Mexican withholding tax, which currently runs 21 percent.

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This Mexican tax may, however, be taken as a *credit* against U.S. taxes (use IRS form 1116, Foreign Tax Credit), so that for most investors the yield could be taken as a net figure when comparing it with other taxable interest-bearing investments.

There's probably no need to be worried that the Frito Bandito will expropriate your bank account. Bank deposits don't involve the touchy matter of ownership of "national resources" as do, for example, mines or oil wells. Neither are they as "visible" as a factory which can excite local envy. Most important, perhaps, is the fact that Mexico depends on a constant turnover of these funds to oil the wheels of its industry and commerce and there is nothing like a whiff of nationalization to scare off capital. While a mine or a factory is a vulnerable fixed asset, capital can disappear with the click of a teletype.

While financiera deposits are not formally insured, the government has, in effect, stood behind financieras to bail out any that got in trouble in order to preserve the country's good name as a safe haven for money. It is reported by a number of people who seem to know the situation, that no depositor has lost money through the failure of a Mexican bank or financiera in over 40 years. While this policy on the part of the Mexican government is not a matter of law, we should remember that a law is no protection against most governments anyway. Most investors would probably be better off to rely on the market forces to keep the government honest, in this instance on its need to keep up the flow of foreign money into its financial institutions.

Deposits are denominated in pesos and customarily start at amounts of 10,000 pesos ($800), 50,000 pesos ($4,000), and 100,000 pesos ($8000) and run up to 1,000,000 pesos ($80,000) at which point even higher rates become available. As far as risk of devaluation goes, the peso is classed by the IMF as a hard currency and may even be sounder than the U.S. dollar. The relationship between the peso and the dollar has not changed for 20 years. This means, of course, that the peso followed the dollar down on its recent devaluations but due to the volume of trade between the two countries, an upvaluation against the dollar has generally been thought out of the question. As a consequence, the peso probably presents no risk against the dollar on a peso devaluation, but probably also presents little opportunity for profit on a dollar devaluation.

A LATIN SWITZERLAND

What is the tax situation? Interest is taxable to U.S. residents at ordinary income rates. Income is also subject to Mexican withholding tax at the source at a rate of 21 percent. Since, as we have noted, this may be taken as a *credit* (not simply as a deduction against income) against American taxes, the rate may be treated as an after-tax figure when comparing it to the earnings of U.S. bonds or accounts. Mexican deposits are free from the U.S. Interest Equalization Tax through the underdeveloped nation exemption. Financiera deposits are foreign bank deposits for the purpose of reports under the U.S. Bank Secrecy Act, including the reports on the transmittal of funds outside the U.S. The Bank Secrecy Act does not restrict foreign accounts, it merely requires that you tell the government what you're up to. (See "Bank Secrecy," *REASON,* December 1973.)

While we're on the subject of candor with one's sovereign, we might note this quote by Eugene Latham, of **Mexletter Investment Counsel:**

> Mexican law is similar to Swiss law as concerns the guaranteed secrecy of bank accounts. While Mexican accounts are not normally operated as "numbered" accounts, it is against the law for any bank, broker or counselor to reveal any information about a client or depositor to a third party. Since the Mexican government has no tax treaty arrangements with any other country, the confidential nature of all Mexican investments is assured.

For the investor who wants to try his hand at a Pagare or a Bono there are a number of options open. He may deal direct with a financiera. There are some considerations against doing this. Besides the language problem, Mexican laws are in some respects rather technical and may pose a snare for the unwary (or even for the cautious, for that matter).

To get around these problems, an American intermediary may be used. This will reduce your return slightly, but the convenience and expertise should be worth the cost. One of the oldest of these is Mex-

letter, mentioned above, with offices at Hamburgo 159, Mexico 6, D.F. Even closer to home, **Shearson Hammill** handles pagares for their customers. William Meikle of Shearson says that he has been handling financiera certificates since 1968 and 80 percent of his customers have renewed them.

For further information readers may write to Eugene Latham at Mexletter or Carl Ross at **Inversiones Alba,** Reforma 336, Mexico 6, D.F. In this country they can contact William Meikle at Shearson's Los Angeles office. There is, in addition, a booklet on the subject available for $2 from **The Investor's Mexico,** P.O. Box 2816, Grand Central Station, New York, NY 10017. ◻

Davis Keeler's Money column alternates monthly in REASON with John J. Pierce's Science Fiction column.

foreign correspondent

A BRITISH LIBERTARIAN PARTY?

London, England. "The need for a modern Cobdenite movement which would combine a belief in both personal and economic freedom with nonintervention overseas has still to be met. It might attract much more general support than the conventional Tory or Labour politician would suppose." So wrote Samuel Brittan, Economics Editor of the *FINANCIAL TIMES* in his latest book *CAPITALISM AND THE PERMISSIVE SOCIETY.*

Brittan's swing from the left to the right is yet another example of what one leading journalist termed "the fashionable trend towards laissez-faire capitalism." This is by no means wishful thinking—the trend has been increasingly noticeable over the last few years. The three most apparent factors in my mind which have contributed to this change are: the continuous information flowing from the **Institute for Economic Affairs (I.E.A.),** the large increase in the sale of Ayn Rand's and other libertarian books, and the changing political situation. Whereas the first two factors were the prime *causes* of the new trend, there is no doubt whatsoever that recent political events have increased the momentum. Prior to the 1970 election all rightists were consolidated in their opposition to the Labour Party. But since the Conservatives abandoned (immediately following the election) every point of their splendid election manifesto, the fires of the rebel right have been stoked with the fuel of broken promises.

Whereas a new philosophy is spread by a process of intellectual osmosis, on rare occasions there appears on the political horizon a figure who has the courage and foresight to exploit new ideas, thereby expanding that process. It is hard to gauge the extent of one man's influence in the political arena, but it is certain that **Enoch Powell,** the prickly thorn in the side of consensus politicians, the greatest intellect to sit in the House of Commons this century, will go down in history as the rebellious politician who in Orwellian Britain proclaimed *Capitalism* as man's greatest gift to mankind! Only time will tell whether he is depicted as a latter day eccentric, or as a statesman whose infallible insight and perceptive intuition made him clearly aware of the grim dangers in the nation's path and who braved ridicule and political ostracism in order to instil in the people a real sense of urgency.

The dissension on the right and the formation of new groups is in relative terms analogous to the period following the American elections in 1964. As patriotism and empire—once the hallmark of the Conservative right—gave way to the emergence of more coherent political thought, as the Conservative hierarchy moved left and their interventionist policies failed with increasing rapidity, a vacuous stage was left. Into this vacuum created within the Conservative Party there moved the small but significant group of Free Marketeers who seemed to give life and direction to the bedeviled and bewildered.

The battle which followed resulted in a field day for the press, and the **Monday Club,** formerly the most powerful pressure group within the Conservative Party was torn asunder. The free market people and the libertarians, having dealt the death blow to the Monday Club, combined forces and turned on the momentarily euphoric government.

PRODUCING RESULTS

Armchair libertarians they are not, and with the sweet taste of victory still lingering, they have forged ahead to form new groups—purist and nonpurist—each pursuing its own projects, while in battle forming a common front against the enemy.

Success along similar lines has been achieved on the back benches of the House of Commons. This is largely due to Powell's courage (he twice resigned from the Cabinet, once over increased government expenditure) [and, as this issue goes to press, he announced that he was giving up his seat in Parliament because he couldn't ask voters to support the Conservative Party in the election called by Prime Minister Heath for February 28—Ed.]. Powell's courage, coupled with his enormous intellectual power in debate and his unassailable logic, has created a hard-core of well informed M.P.'s (Powell's Prodigies) armed with I.E.A. literature who continually assail the government on questions ranging from free trade to the free price of gold.

Because of this and Powell's high popularity among the ordinary people, many more M.P.'s are at least paying lip-service to the virtues of the free market. This has helped to clear the way for a number of similarly inclined *very* free market young men who are standing as Conservative candidates. That the Constituencies have chosen them against the wishes of the Central Office shows a marked change of attitude.

No so long ago the universities were a vast wasteland and only in a few far flung corners such as St. Andrews did you hear the name of Adam Smith spoken with due reverence. Then began a race to see how far right one could respectably go. They are now tripping over each others' feet in their determination to move in that direction!

This may sound like a passing flirtation with a new fashion but thankfully it is not. As with any new idea there are the pacemakers, and those who follow cautiously. For many people the enthusiasm with which these ideas are received has given them an added impetus. Pessimists they are no longer and in our halls of learning the names of Hayek, Mises, Rothbard and Rand echo our hopes for the future.

By and large the leading newspapers in England are more sceptical of radical ideas or new trends than are their counterparts in America. Apart from *THE GUARDIAN,* which is vaguely left of centre and has given the libertarian movement wide coverage for some time, there has been a definite change of editorial policy noticeable among the others. A case in point is Samuel Brittan whom I quoted previously. He was at one time very much to the left in economic matters, but the continual failure of interventionist policies persuaded him to look into other ideas—to

the free market—for the answers. Today he is one of the prominent spokesmen for Friedmanite economics!

THE SPECTATOR, an influential weekly, has also moved further to the right. Patrick Cosgrave, the political editor, has asked David Farrer of the editorial staff of *FREEDOM FIRST,* to write a full page article on why he moved from the left to Ayn Rand. *THE DAILY MAIL,* which is not exactly intellectual, now has Andrew Alexander, one of Britain's top political correspondents, writing for them and he is extremely sympathetic to the libertarian cause.

But in my view it is the change in the editorial policy of *THE DAILY TELEGRAPH* which I have found to be the most fascinating. Four years ago it preached true-blue stick-in-the-mud Conservatism. *Today* they can boast that they have the three brightest young men in Fleet Street on their staff, and these "young Turks of Fleet Street"—all editorial leader writers—are devouring the works of Rand, Mises and Rothbard! In their columns they are urging the libertarians to break away from the Monday Club, hailing the new **Selsdon Group** as truly libertarian and write disparagingly of the government, the moocher and the parasite. Shades of Randianism, no less!

(Michael Harrington, who is one of them, has been given permission to write an article on Rand's philosophy. All of this I am sure, points to a definite intellectual change.)

SURVIVAL LIKELY

Breakaway groups are very often a sign of dissatisfaction in any political party but more often than not they tend to just wither away. However now and again the seeds of such dissatisfaction are sown on fertile soil, and so it is with England today. For 1973 has been the season for new groups and much to the government's consternation they have all the signs of survival. Some of them are: the Anti-Dear Food Campaign (the old Free Traders) Economic Radicals, the Tuesday Club, Powellites, Selsdon Club, the Adam Smith Club; and now since the Society for Individual Freedom has become avowedly libertarian its membership, too, is on the rise.

Political pundits familiar with splits in the Republican Party in 1964 are apt to compare it with the Conservative Party in England today. The split between the Whigs and the Tories is widening, mainly due to the "phantom capitalist" Enoch Powell. In the past when the party has been in trouble they have pulled out Powell to pull in the votes. But Powell has of late been refusing to go along with that. Recently in a full blaze of publicity he expounded his *own* ideas about a realistic budget. Not only that, but in his famous speech at Stockport he warned the Government he would not necessarily ask the British people to vote Conservative at the next election! And *then,* before they could recover from the shock, again in a full blaze of publicity, he handed out his idea of a deflationary budget. Then followed the most startling political event since 1949. The Liberals, who had held only six seats, won two of the safest Tory Constituencies! This is *not* just midterm dissatisfaction, and the question no longer is will we have a new party—but *when?*

Whatever Mr. Powell and his rebels decide to do, whether it is to stand as independents, form a new party or remain for the time being to fight socialism from the "inside," England is in for the biggest political shake-up since the Home-Rulers left the old Liberals to join the Conservatives. Only this time we will witness the Whig elements leaving the Tory Party. How libertarian this new party will be will depend on how active the libertarians themselves are in promoting their ideas.

PAULINE RUSSELL

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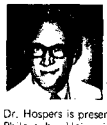

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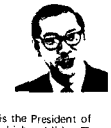

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book review

THE LADY AND THE TYCOON. Edited by Roger Lea MacBride. Caldwell, Idaho: The Caxton Printers, Ltd. 1973. 401 pp. $5.95.

Reviewed by THOMAS JOHNSON

There are probably few individuals who are interested in freedom—and the philosophical principles that make it possible—who have not at least heard of Rose Wilder Lane, and been influenced by her thinking via other writers who have read her thoughts. One comes to realize this when reading the engaging work, *THE LADY AND THE TYCOON,* which contains much profound thinking that was expressed in an exchange of letters between Mrs. Lane and Jasper Crane, a vice president of the DuPont Company.

Rose Wilder Lane, who had been a successful freelance writer, newspaper reporter and novelist—her best known book being *DISCOVERY OF FREEDOM*—for most of the first four decades of this century, decided to stop writing fiction in 1938. As MacBride points out in his introduction to the book, she did this "to emphasize her opposition to paying income and social security taxes used to support New Deal programs." Following this decision, Mrs. Lane began an extensive correspondence with numerous individuals for the purpose of better understanding and fostering her philosophical ideas. At the suggestion of Leonard Read, she began writing to Jasper Crane, and this correspondence continued until her death in 1968.

The book spans the time period between January 1946 to May 1966, but the comments in these letters (particularly Mrs. Lane's) reach back into both recent and ancient history, and provide the reader with such a perspective on the development of freedom over the centuries, that one can more fully appreciate just how *new* the idea of freedom is in human development and what tremendous possibilities *now* are at hand for the fostering and establishment of freedom in the world. This aspect of the book gives a needed insight and surge of hope in the 1970's when matters look so bleak!

The letters of the Lady, but unfortunately not those of the Tycoon (which are usually quite brief), are a constant stimulator of thought. One cannot help but be provoked by her comments on foundations, rights, education, political parties and personalities, welfare etc., along with her revealing remarks about well-known fighters for freedom and their books. And one also cannot help but be infuriated by other statements, as I was, on such topics as the meaning of truth, what science is able to deal with, what emotions are, the significance of the Ten Commandments, mysticism, and many others. But no matter what is discussed, or how wrong or right one may consider the ideas presented, one never fails to be enormously stimulated by the Lady who almost unceasingly applies reason and logic in her deliberations.

I found myself, at every free moment, rushing back to the book to see what new ideas Rose Wilder Lane was going to express in her next letter to Mr. Crane. By having a copy of *THE LADY AND THE TYCOON* in my possession, I felt as if some marvelously exciting and thought provoking personality had come for a visit to my home, and that although I had other chores that had to be attended to, I cut them as short as possible in order to hurry back to my guest who was providing me with a tremendously exciting intellectual adventure.

We can all be thankful that Roger Lea MacBride took the time to edit the correspondence between the Lady and the Tycoon, for this work will provide every freedom loving and thinking individual with the opportunity to gain a fuller insight into the life and thought of one of this centuries most devoted crusaders for freedom: Rose Wilder Lane. ◻

Thomas Johnson is a professor of biology at the Mary Washington College of the University of Virginia at Fredricksburg.

MONEY AND MAN. By Elgin Groseclose. New York: Ungar. Pp. 311. $1.75 (paperback).

Reviewed by EUGENE GUCCIONE

In ages past, a government would seize gold and try to palm off bronze or copper coins to its citizens. The modern method has consisted of palming off *paper* after seizing gold. So, there's nothing new in today's governmental attitudes toward gold or other forms of wealth.

The moral in *MONEY AND MAN* is that wealth can be obtained by *earning* it, which is hard; or by *seizing* it—which is much easier. Of course, if a man seizes another man's property, the action is called a crime; but if done by a government, it is called, say, taxation, or devaluation, or even deficit financing!

This book gives a factual account of the swindles and frauds perpetrated by individuals and governments throughout history—from the first devaluation ever recorded (Greece, sixth century B.C.) to the current monetary crisis; from the brilliant get-rich-quick scheme of John Law in 18th century France, to the dazzling stockmarket manipulations in 20th century America.

Some readers, and I am one of them, will not fully agree with all of Dr. Groseclose's recommendations for establishing a sound monetary system. But *MONEY AND MAN* will enable anyone to view current monetary problems within the context of the almost uninterrupted fraud and plunder of the past 2,600 years. The book is valuable not merely to economists but to the unwary millions who have been systematically victimized by their own ignorance and by the greed or good intentions of their rulers.

Note: The paperback ($1.75) edition of *MONEY AND MAN* can be obtained by writing to: Institute for Monetary Research, 1010 Vermont Avenue N.W., Washington, D.C. 20005. ◻

Eugene Guccione is senior editor of ENGINEERING & MINING JOURNAL and a director of the COMMITTEE FOR MONETARY RESEARCH AND EDUCATION.

movies

REVIEWED BY CHARLES BARR

• "We have seen the future and it doesn't work," proclaims an advertisement for **ZARDOZ.** I've seen the movie and it doesn't work, either. But many of its parts do, and the obvious dedication and craftsmanship that went into the picture will probably secure its position as the science fiction cult film of 1974. The story takes place in the year 2293, after the supposed ecological disasters of the twentieth century have come and gone. The intelligentsia, having discovered the secret of immortality, have sealed themselves off into Vortexes, small communities separated from the outside world by impenetrable force fields. The world at large is inhabited by the wretched remnants of ordinary humanity, called Brutals, and by the slightly more intelligent Exterminators, who worship Zardoz and hunt down and kill Brutals in his name. Zardoz, a phony god created by scientists in the Vortexes, is a massive flying carved stone head, circling the globe and dispensing weapons and instructions to the Exterminators. One day an Exterminator named Zed hides in the stone head, and thus penetrates a Vortex, where he discovers that all is not well in paradise. While death has been banished, boredom has taken its place, sex has disappeared, old age has become the supreme punishment for crimes, and a seemingly universal death wish is corroding what remains of morale and ambition. Sean Connery plays Zed as an earthy, intelligent savage, a stark contrast to the genteel, sterile culture of the Vortex. His fight to destroy the Vortex, aided by many of its residents, provides the dramatic focus of the movie. The acting is superior in both major and minor roles, and the photography and special effects are among the finest ever achieved. But the movie as a whole fails to work because, in an apparent effort to soften its dark vision of the future, highly stylized comic elements are scattered throughout the film, implying that it is not to be taken seriously. But the movie's explicit violence makes it clear that serious issues are, in fact, at stake. John Boorman, who wrote and directed *ZARDOZ,* may have been simply trying to avoid making a solemn "message" film; but by hedging his bets with the movie's tone, he has destroyed its essential unity, and cast the audience adrift in search of its true meaning. Rated "R."

• Stories about honest cops attempting to battle corruption in the ranks are nothing new, but even within this well-worn genre **SERPICO** is an exceptional movie. For one thing, the story it tells is true. For another, it bypasses the cliches of corruption-as-conspiracy, showing instead the metaphysical horror of a system in which graft and bribery are virtues, while honesty is a vice. Al Pacino delivers an intense performance as Frank Serpico, an unconventional New York City policeman trying vainly to coexist with the all-pervasive corruption, but forced into lonely exile by his unyielding integrity, despised and feared by all the others on the force. "How can you trust a cop who won't take money?" asks one of his associates, summing up the feelings of the rest of the department. His attempts to expose the corruption meet with open indifference and covert hostility; the system is too well entrenched. Serpico's one-man crusade reduces his personal life to a shambles, destroying two successive romantic relationships and making him an embittered outcast. So much does he suffer that, within the context of his characterization, one wonders why he is willing to sacrifice so much for the sake of an indifferent city. From a libertarian perspective, the movie contains one major flaw, and that is its maddening refusal to question the legal structure that permits police corruption to flourish. Gambling and narcotics are the basis for most of the policemen's illicit income, according to the movie. But the film never once explores the possibility that the legal prohibitions against such activities make widespread police corruption possible and profitable. In concentrating on the corruption itself instead of its root causes, *SERPICO* does a magnificent job of spotlighting the disease, but fails to come to terms with the cure. Rated "R."

• Not being a Woody Allen fan, I went to see **SLEEPER** because people kept telling me what a great libertarian movie it is. Well, there are a few digs at government which should please the anarchist contingent; but they are not essential to the film as a whole, and the only thing one could say with any assurance about the movie's political aspect is that it is antitotalitarian. Otherwise it is just Woody Allen, doing his thing in the year 2173. He wakes up after 200 years in suspended animation to discover that the United States has become a dictatorial and highly technological society, with a primitive pseudo-Marxist underground as the only opposition. Woody Allen spends most of his time trying to stay out of trouble, disguising himself at various times as a renowned surgeon and a humanoid robot. For some reason, the disguises always seem to work perfectly. In a few instances, having exhausted all other remedies, he temporarily becomes a self-assertive hero; these are the best moments in the film. The worst moments are the action sequences, in which he moves with all the grace of a drunk gorilla. Diane Keaton plays his not-so-faithful companion, and she looks much too intelligent to be trapped in a

(concluded on page 49)

Al Pacino (center), as an undercover detective, tries to set up a dope deal in SERPICO.

trends

This column reports trends in the advancement of individual liberty and the rediscovery of economic freedom. Readers are invited to submit material of potential interest.

A SMALL STEP TOWARD TV FREEDOM

The Federal Communications Commission (FCC) attempts to justify its regulation of broadcast radio and television on the grounds that the number of available channels is so limited that government must intervene to prevent "monopolies" and ensure "fairness." Although this justification is seriously defective, it at least possesses surface plausibility; the FCC's control over *cable* TV, however, has never had any justification other than arbitrary government power. Cable TV does not use the airwaves at all, and provides the capability for upwards of a hundred channels; hence, it presents little likelihood of monopolistic control or of one-sided programming. Yet for more than a decade the FCC has held back the full development of cable TV, much to the delight of those with heavy investments in existing broadcast companies.

But all of that may soon change, based on a top-level government report recently released. For the past 2½ years Clay T. Whitehead and the federal Office of Telecommunications have been wrestling with the cable TV problem, in light of the strong political influence of the broadcast industry. Whitehead's report on cable TV begins by stating the obvious—that the usual justifications for FCC regulation do not apply to cable TV. It therefore recommends that cable be exempted from the "Fairness Doctrine" and the accompanying federal supervision of program content. Indeed, the report explicitly calls for application of the First Amendment's freedom of the press protection to cable TV.

This is great news, for if adopted by Congress and the FCC, this kind of hands-off policy could lead to the flowering of a new era of diverse, sophisticated programming, catering to hundreds of markets currently too small to be served by broadcasting's mass-media approach. Unfortunately, however, the Whitehead report could not leave well enough alone. Although opposing federal control of program content, it proposed a wide variety of controls on the ownership and use of cable systems:

- Cable systems would be barred from carrying sports events in competition with broadcast TV,
- Cable owners would be forbidden from controlling program content, and would be forced to sell time or lease channels to all users equally,
- Common ownership or control of complete transmission systems and program supply systems would be forbidden,
- Freedom of the press would have to give way to continued restrictions against "pornography, libel, criminal incitement, and the like."

Fortunately, these restrictions are at this point only proposals. Hopefully, Congress and the FCC will have the good sense to modify or eliminate them, while strongly embracing the jettisoning of the Fairness Doctrine. Perhaps then there will be new life in America's vast television wasteland.

SOURCE:
- "Plan for Developing Cable TV Offered," Don Irwin, LOS ANGELES TIMES, January 17, 1974.

ECONOMIC ENLIGHTENMENT

Ignorance of the findings of modern economics is not limited to the general public; it is also widespread among those making policy in our mixed economy. The nation's law schools train more policymakers than any other institution; hence, it is especially significant that a major effort to bring economic enlightenment to law schools is under way. The Summer Economics Institute for Law Professors last year completed its third annual season. Directed by Professor Henry Manne of the University of Rochester, the Institute brought together 23 law professors (out of 120 applicants) to hear UCLA economics professors Armen Alchian and Harold Demsetz lecture on, respectively, market and price theory, and the theory and structure of property rights.

Although all three Institute professors personally favor free market solutions to social problems (and all three are listed in *REASON's* Faculty Registry—see the January 1974 issue), the emphasis in the summer sessions is on economic theory and myth-busting. Professor Alchian notes that one of the principal aims of the course is to enable the participants to "read and understand economic literature, so they'll be able to avoid the more blatant economic errors in their teaching and perceive the simple economic flaws that appear in daily newspapers." Students are also encouraged to contrast the approach taken in Paul Samuelson's popular *ECONOMICS* textbook, with that of Professor Alchian's own *UNIVERSITY ECONOMICS;* the latter is noninterventionist, non-Keynesian, and solidly empirical, in contrast to the Samuelson book.

Among the Institute's graduates are former acting Attorney General Robert H. Bork (known for his revisionist views on antitrust policy) and Glen O. Robinson of the University of Minnesota, expected to become the next member of the Federal Communications Commission. In funding such an endeavor, the four sponsors (the Koch Foundation, the Earhart Foundation, the Veritas Fund, and General Motors) appear to have identified a key "leverage point" for righting some of the wrongs caused by decades of rampant interventionism.

SOURCE:
- "Bringing Law Profs Up to Date on Economics," Edwin McDowell, *WALL STREET JOURNAL*, July 23, 1973, p. 8.

SETBACK FOR ZONING

In a landmark decision, a federal district judge has overturned one of the country's most restrictive zoning laws. The case, if appealed, may well find its way to the Supreme Court, in the continuing battle between environmentalists and property owners.

The city of Petaluma, a fast-growing 31,000-person suburb of San Francisco, last year enacted a special zoning ordinance restricting the construction of new housing to 500 units per year. The ordinance was an attempt by the city government to slow down the city's rate of growth, which was rapidly changing its former semirural character. In response, the Construction Industry Association of Sonoma County and other builders' groups brought suit to have the ordinance overturned. The National Council of Home Builders contributed $25,000 for legal expenses of the suit.

In declaring the law unconstitutional, Judge Lloyd H. Burke said the U.S. Constitution does not allow a city to

prohibit people moving in from elsewhere. "The issue is relatively simple," he said. "It is the use of zoning by people who live there, versus those who want to live there." Unfortunately, Judge Burke's decision did not grapple directly with the most important underlying issue—whether a city has the right to prohibit property owners from utilizing their property. To have addressed that issue would have (properly) thrown into question the validity of *all* zoning laws.

SOURCES:
- "Petaluma's Growth Rate Law Unconstitutional, Judge Rules," Daryl Lembke, LOS ANGELES TIMES, January 18, 1974.
- An Antigrowth Law Runs Into Trouble," BUSINESS WEEK, January 26, 1974.

GETTING GOVERNMENT OUT OF THE BEDROOM

In much of the world, government has taken upon itself the job of policing people's private sexual conduct, enforcing a puritanical set of rules on everyone. Although the situation is slowly improving in the United States, recent developments in three other countries make American progress look meager.

In Toronto, despite an official ban on televised "obscenity," UHF Channel 79 leads the Friday night ratings with its "Baby-Blue Movie." Such films as *I Am Curious (Yellow),* and *The Conjugal Bed* constitute the program's regular, highly popular fare. Canadian law does not define "obscenity" and Canadian broadcasting regulators are apparently not as uptight about sex as the American FCC. Most of the complaints about the weekly show have come from the U.S. side of the border.

In Italy, despite a centuries-old church-state alliance, prostitution is both legal and booming. Ironically, the current expansion of prostitution owes its origins to a 1958 law aimed at wiping it out. The "reform" law closed down all 717 of Italy's state-controlled brothels, thereby driving prostitutes into the streets. Their number has more than quadrupled in the 15 years since the law's passage. Today there is even a prostitutes' union—the Italian League for the Defense of Prostitution—started by a female postal worker. Miss Titti Sciascia founded the League after losing her job for proposing the legalization of brothels, along the lines of the "eros centers" in West Germany.

It is West Germany where the trend toward getting the state out of the bedroom has recently been most apparent. Last November Parliament passed historic legislation reducing the role of the state as follows:

- Sale of "pornography" to adults (over 18) is no longer forbidden,
- Homosexual acts among adults are no longer forbidden,
- Extramarital sexual relations are no longer forbidden,
- The age of sexual responsibility is reduced from 21 to 18 (and in certain cases to 16 and 14).

The new legislation is the first major change in German sex laws since the 19th century, and makes West Germany among the least restrictive countries in the world with regard to government interference with sex.

SOURCES:
- "The Blue Tube," TIME, April 9, 1973.
- "Prostitution Booming in Italy as Law Shutting Brothels Backfires," Reuters (Rome), November 23, 1973.
- "Bonn Sex Law Reform: Anything Goes—Almost," LOS ANGELES TIMES, November 10, 1973.

ENERGY CRISIS RESPONSES

Amidst the plethora of new controls and regulations arising out of the energy crisis, two moderately encouraging developments have occurred in Southern California. First, IRS investigators reported in January that more than half of all gas stations in the region were ignoring the government-imposed price freeze. Most of them were getting away with it, since IRS staff limitations permitted only spot checks. The Southern California violation rate was reportedly twice the national average.

The other development, of more lasting significance, occurred in Los Angeles. After months of procrastination, the City government has finally yielded to common sense and removed its prohibition on jitney service in the city. Owner-drivers of passenger cars and small vans will now be allowed to provide low-cost transportation that combines much of the comfort and convenience of taxicabs with economy approaching that of buses. With the new availability of jitney service, many more people will be able to get around Los Angeles without having to use their own car, thereby helping reduce congestion, smog, and overall fuel consumption. The same idea could be applied in every city, if ordinances prohibiting jitneys were repealed (see "Taxis and Jitneys: The Case for Deregulation," *REASON,* February 1972).

In addition to permitting jitney service, Los Angeles officials have recently decided to allow taxicab competition throughout the city, thereby ending the 40-year monopoly granted to the Yellow Cab Company. The combination of competing cab companies and unrestricted jitney service could make a sign significant difference in Los Angeles' auto-dependent transportation system, especially in light of the current fuel shortage.

SOURCES:
- "Over Half of Gas Stations Violate Price Freeze, IRS Says," Mike Goodman, LOS ANGELES TIMES, January 20, 1974.
- "Private Jitneys in L.A. Win Board O.K.," LOS ANGELES TIMES, January 18, 1974.
- "Transportation Unit OKs Citywide Taxi Competition Plan," Doug Shuit, *LOS ANGELES TIMES,* February 8, 1974.

REDEFINING THE PUBLIC INTEREST

Traditionally, one of the greatest blank checks that could be handed to an agency of government has been legislation enabling it to act on behalf of the "public interest," or "public convenience and necessity," or "public safety, health, morals, or general welfare." Since nobody can agree on what is meant by these terms, they permit the agency to decide cases arbitrarily—or rather, whichever way is most conducive to the most influential special interest. Two little-noticed 1973 court decisions made small dents in this bureaucratic license, however.

Both cases concerned the use of state regulation by professional groups to further their own economic interests, under the guise of protecting the public welfare from "less qualified" practitioners. In the first instance, real estate interests in Florida had persuaded the Florida Real Estate Commission to prohibit the licensing of applicants who had studied real estate via out-of-state courses. Upon challenge, the State Court of Appeals ruled that the law was a clear-cut case of using the state to restrict competition, to the detriment of consumers, and found the law unconstitutional.

The second case concerns pharmacists. In Maryland, as in most states, the State Board of Pharmacy prohibited all advertising of prescription drugs as "unprofessional." In court, the pharmacy interests raised every possible defense of their anticompetitive rule: that it reduced drug abuse (by reducing demand for drugs), that it enabled pharmacists to monitor a customer's prescriptions, and that it prevented "demeaning rivalry" among pharmacists. But the Court of Appeals saw through this special pleading and found the law unconstitutionally anticompetitive.

These two cases may set valuable precedents for ending the state-guaranteed monopoly status enjoyed by many professions.

SOURCES:
- "Public Interest Regulations," BUSINESS WEEK, November 17, 1973.
- Florida Real Estate Commission v. Windsor, Ct. App., 3rd Dist., Fla. (1973).

• Maryland Board of Pharmacy v. Sav-a-Lot, Inc., Ct. App., Md. (1973).

THE NEW VIGILANTES

Though it may be hard for life-long urbanites to comprehend, many people in America's rural West have a strong, basic attachment to private property rights. In recent years Western landowners have become increasingly frustrated as bureaucratic land use plans, environmental legislation, recreational vehicle owners, and hunters have shown increasing disregard for their property rights. Even law enforcement agencies are often perceived to be spending "too much time chasing illegal Mexican laborers" to be effective in warding off intruders.

As a result of these concerns, farm and ranch owners in Idaho, Utah, northern Nevada, and Wyoming have formed the *Vigilante Committee of 10,000,* pledged to keep environmentalists, bureaucrats, and hunters off their lands. So far, according to a representative, the group has 3500 members (including several state legislators), each of whom pays $50 per year and posts signs warning trespassers. Group members do not plan to shoot trespassers, but apparently have no qualms about shooting up their vehicles. Member Del Ray Holm lists the group's enemies as "environmentalists, state fish and game personnel, hunters, rustlers, vandals, and state officials who forget who owns private land." Apparently the spirit of the Old West lives on.

SOURCE:

• "Legislators Reported to be Vigilantes," UPI (Roberts, ID), November 4, 1973.

viewpoint

MURRAY N. ROTHBARD

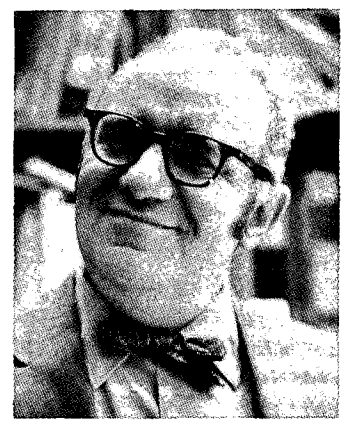
LAW WITHOUT GOVERNMENT

In what sometimes seems the interminable argument between anarcho-capitalists and "limited government" archists, one major fear of the latter is that a world of anarchism would be devoid of law, allowing the private courts and police to plunder and kill each according to its own "legal" edicts. The limited archist is joined in his skepticism over the rule of law in anarchism by various anarcho-capitalists who themselves oppose such a general law code in favor of barter and traffic between private defense agencies unhindered by general law.

One reply to both sets of skeptics is to point to the historical record: to the emergence and even the rule of law before and outside of the existence of the State. Generally accepted tribal custom, laws developed out of generally agreed upon rules by privately competitive judges, the body of the law merchant and admiralty law, a large part of the common law—all these can be considered as emerging without benefit of executive or legislative or even judicial decree by government.

But let us consider the problem more philosophically: *who* will decide the content of the libertarian law code of the anarcho-capitalist society of what I hope will be the future? The answer is: reason. The usual riposte: *whose* reason? of course misconceives the whole concept of what reason is, and comes with particular ill-grace from Randians who should know that the posing of this very question consigns the questioner to one of the lowest ranks of Hell in *ATLAS SHRUGGED.* If it were not ungrammatical we could reply: reason-reason, the same reason, I might add, which leads all of us, anarchist and limited archist alike, to oppose wage-and-price-controls, government paper money, victimless crime laws, and all other incursions of the State. Why was not the "whose reason" cry raised on these other issues?

In fact, it is reason which leads us to the libertarian position, and it is this same reason which decrees that vital to that very position is a general law code which defends person and property against attack, which defines property on the basis of the right to self-ownership, and which elaborates the logical implications of these axioms for protection of private property. Why should a libertarian balk at any of these provisions? The very rationality which led him to become a libertarian and to embrace the doctrine consistently also requires the acceptance of a law code which defines and defends that property. So why the fuss at this final step?



Suppose, for example, that a private defense agency in the free society takes it upon itself to consider all redheads as per se evil to be put to death wherever found. It is hardly a perplexing point to note that libertarians would condemn such a policy, on the basis of libertarian doctrine enshrined in the general law code, and that libertarian defense agencies would proceed against the antiredhead aggressors with dispatch. The question of "whose reason" need not be treated seriously. No government courts or laws are needed to tell us that murdering redheads would be a violation of their liberty. In fact, given both their essential nature and the historical record, is it not the height of folly to rely on *governments,* of all institutions, to define aggressions against liberty?

Murray Rothbard is professor of economics at the Polytechnic Institute of Brooklyn. Dr. Rothbard's viewpoint appears in this column every third month, alternating with the viewpoints of Tibor Machan and David Brudnoy.

WISHES OF AN ELDERLY MAN AT A GARDEN PARTY

I wish I loved the Human Race;
I wish I loved its silly face;
I wish I liked the way it walks;
I wish I liked the way it talks;
And when I'm introduced to one
I wish I thought What Jolly Fun!

W. Raleigh

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—In *stocks* and *bonds*: the market is as treacherous as a mine field.
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What is going on? Let me tell you: we are witnessing new economic patterns unlike anything we have seen in this lifetime. We are witnessing inflation with rising prices and critical shortages—some very real—some imaginary, but carefully staged for the benefit of a few shrewd companies or individuals. We are observing a world that, despite short term fluctuations, is openly expressing its mistrust of the value of our dollars. And we are witnessing the world's superpowers teetering precariously on the brink of runaway inflation, depression, or *both*.

The next few years will belong to those who understand that *these new economic patterns are still based on the natural economic laws that are as old as civilization*: supply and demand, self-interest and greed; the domination of the blind and the faint-hearted by those who have the courage to *act* rather than to foolishly do *nothing* while "hoping for things to get better."

There is a selct group of men in this country who long ago predicted the approaching crisis . . . and who now can see clearly into the future because they have never been blinded by fairy-tale economics. They have been in close touch with each other, while the rest of the world has chosen pretty much to ignore them . . . and *many of them have already made great fortunes* by acting upon their own predictions about gold, silver, coins, mining stocks, etc.

The publisher of *Human Events*, the Washington newsweekly, has invited the most brilliant of these economic clearthinkers to join in the publication of a new bi-weekly letter

THE *INFLATION SURVIVAL LETTER*

which is intended to show you, *in simple, non-technical English, how to capitalize on the financial blindness of others*, and avoid the consequences of our nation's tremendous economic mistakes. The *Inflation Survival Letter* will also keep you informed of latest worldwide economic and political realities that bear on the inflation-depression crisis. Since most of the mass media will continue to ignore these realities, chances are that most of this critical news and economic analysis will be found only in the *Inflation Survival Letter*. *ISL* will cover coins and precious metals, gold shares, commodities, agriculture, legislation and legal decisions, the energy supply, international trade, science—*every* topic that effects your assets—and their future value. Typical of the subjects that are covered:

- Current trends in gold and silver *coins, bullion*, and *mining stocks*. Specific action to take regarding precious metals investments.
- How to "read between the lines" of your newspaper to spot upcoming price rises or major economic upheavals.
- How inflation and depression will affect you if you are involved in a pension plan, deferred tax plan or trust fund.
- A smart way to stock your freezer against a lightning disaster.
- Latest legislation and court decision that will affect your assets—or offer a real investment opportunity.
- How to avoid the pitfalls in buying or selling a home during a period of galloping inflation.
- Foreign currencies: another approach to inflation-proofing your assets.
- Specific dos and don'ts on stock and commodities options, margin buying, short selling.
- Common sense guidance on choosing, buying and supplying that rural "hideaway" if the worst happens, and complete nationwide economic collapse brings on civil riots.

HERE ARE SOME OF THE INVESTMENTS, BOTH SAFE AND RISKY, THAT WILL BE DISCUSSED IN THE PAGES OF THE *INFLATION SURVIVAL LETTER*

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Oakley R. Bramble, one of the very first economic analysts to publicly recognize gold and silver coins as an inflation-proof investment, is the editor of the *Inflation Survival Letter*. Formerly editor of the economic letter *Agora*, Bramble's keen economic insights combined with a lifelong career as a writer and journalist have for forty years helped thousands of men and women survive and even profit from inflation.

Among the other regular contributors:

- *John McFalls* is proprietor of Value Action advisory service, Seattle, Washington. The value of his model gold investment portfolio has tripled in the past six years.
- *Dr. Hans F. Sennholz*, head of the Department of Economics of Grove City College, Grove City, Pa., is one of the world's leading monetary economists.
- *Douglas Johnston*, vice president of the stock brokerage firm of First of Texas, is well and favorably known for his accurate predictions of the gold price break-out in 1973.
- *Henry Hazlitt* is one of America's best known economists. His book "Economics in One Lesson" is the most widely read non-technical book on the subject.
- *Dr. Murray Rothbard* is the leading libertarian theorist in the United States. His first book, "America's Great Depression" (1963) has become an incredibly accurate blueprint of the economic woes which have beset the nation in the past 10 years.
- *Alden Rice Wells* of Exeter, N.H., is both a stock broker and an investment advisor of worldwide renown. His "Monthly Report" and "Quarterly Report" are bibles for "hard-money" investors.
- *Congressman Philip M. Crane* is the leading Congressional force behind legislation to return the legal rights of gold ownership to the American people.
- *Senator Peter Dominick* is the U.S. Senate's expert on gold and silver mining, and an advocate of the U.S. citizen's right to own gold.
- *Donald I. Rogers'* books include "The Day the Market Crashed" and many others. Formerly the financial editor of the New York *Herald Tribune*, Rogers is now president of American Economic Foundation.
- *Col. E.C. Hardwood* is not only one of this nation's leading economists but also is an expert on economic survival. He was quite possibly the first American of note to suggest gold share investments over stock market offerings.

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72

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HUMAN EVENTS

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frontlines

OFF AND RUNNING . . .

The latest in the growing list of libertarians entering races for Congress is **Marvin J. Edwards** (see *REASON* Profile, December 1973), who is mounting a serious campaign as an Oklahoma Republican. Edwards, author of *HAZARDOUS TO YOUR HEALTH* and a recent editor of *PRIVATE PRACTICE* magazine will be running his campaign on the theme that "big government is the only real problem we have." He has a number of advantages going for him—he enjoys close ties with influential Republicans because of his prominent role in health care debates and analysis, and he has strong backing in the **Association of American Physicians and Surgeons,** a small, Objectivist-led, and well-financed group. Two other candidates are seeking the Republican nomination in the Fifth Congressional District—an early show of strength could persuade both not to run. If you live in Oklahoma and have some time to volunteer or can spare some money, please contact the **Edwards for Congress Committee,** c/o **Frank Robinson,** P.O. Box 25517, Oklahoma City, OK 73101.

Marvin Edwards, Republican candidate in the Oklahoma Congressional primary.

Meanwhile, in Ohio businesswoman **Kay Harroff** has filed nominating petitions as an independent candidate for the U.S. Senate. The **Harroff for Senate Committee** submitted over 10,000 signatures, of which only 5,000 need to be valid to ensure a spot on the November ballot. Ms. Harroff, who has been active in libertarian causes for over a decade and is currently chairman of the **Libertarian Party of Ohio,** will run a strictly libertarian campaign: "There are too many Messiahs in the world; do-gooders, legislators, leaders of the people. They place themselves above mankind and set about planning it, organizing it, and ruling it. I do not look upon people as clay, to be molded and shaped to my image." Those interested in this campaign may write to the **Harroff for Senate Committee,** 204 Solon Road, Cleveland, OH 44146.

Kay Harroff, Chairman of the Libertarian Party of Ohio and candidate for the U.S. Senate.

DUTCHESS COUNTY DYNAMO

Sanford Cohen continues to generate publicity for libertarian ideas with his energetic campaign for New York's 25th Congressional seat (now occupied by liberal Republican Hamilton Fish, Jr.). Calling for competition in education, repeal of all victimless crime laws, and implementation of the **Pay-What-You-Want Tax Plan** (see *REASON,* August 1973) Sandy and his indefatigable campaign workers manage to reach up to 500,000 people weekly through newspaper, radio and television coverage. A nude campaign poster touting Cohen as the "candidate with nothing to hide" brought him flack from some libertarians, but accomplished its purpose of generating publicity in the media (*The* Poster, which features Sandy and a strategically-placed telephone, is available from **Citizens for Cohen** for $5. Eat your heart out Burt Reynolds!).

On April 20th **Citizens for Cohen** will sponsor a gala **Fundraising Party**—time: 8 P.M., place: Poughkeepsie, N.Y. **John Hospers** will be guest speaker. For further information on what could be the social event of the season place contact **Ellen Davis,** c/o Citizens for Cohen, Box 1776, Poughkeepsie, NY 12601 or phone (914) 454-1677 or (914) 471-8771. (If you can't attend, send money anyway—they'll make good use of it!)

NATIONAL TAX PROTEST

The Society for Individual Liberty, a nation-wide libertarian campus organization, is busily making plans for this year's **National Tax Protest Day,** April 13th. SIL has invited other libertarian organizations and organizations sympathetic to lower taxes to join in this project, and will produce and make available various items of literature, bumper strips, etc. At a national press conference SIL will announce the two week protest period from March 30th to April 13th. For further information please contact SIL, National Tax Protest Day, 304 Empire Building, Philadelphia, PA 19107. Last year's Protest generated considerable sympathetic publicity—with plenty of enthusiasm and planning libertarians could do even better this year!

NOTES

Several anarchist groups and individuals in New York City are issuing a call for anarchists of the North American continent to meet at Hunter College in New York City on April 19, 20 and 21 to participate in a conference to organize a first continental anarchist congress. With such groups as the **Hunter Libertarian Alliance, Living Theater Collective, Freespace Alternative U., Faggot and Dyke Anarchists,** and **Ecology Action East** participating it promises to be an interesting get-together! If you are interested in participating or have useful suggestions please contact the **Hunter Libertarian Alliance,** 49 E. 65 Street, New York, NY 10021 or phone (212) 675-3043 or (212) 228-0322. Here's a chance for free market anarchists to have an impact on the wider (and decidedly more collectivist) anarchist movement . . . **The Objectivist Reference Room,** 4772 Holt, Montclair, CA 91763 (phone 714-624-8715) is open from 6 P.M. to 9 P.M. seven days per week, with a Sunday afternoon discussion meeting from 2 P.M. to 4 P.M. The Room is designed to help libertarians communicate with each other via social activities, lectures, discussion groups, question and answer sessions, etc. Cassette tape recordings, books, journals, pamphlets, and newspaper clippings will be available in the room to help keep members ($2 per month) and visitors informer . . . The **Libertarian Party of New Hampshire** has given its endorsement to a class action suit filed by **Andrew Melechinsky** of the **George Mason Movement** against Richard M. Nixon for damaging acts of price-fixing and rationing in the

The Objectivist Reference Room, Montclair, California.

fuel industries. Among the many who signed as agents in the suit were State LP chairman **William Zebuhr** and vice-chairman **Arthur Ketchen.** NHLP has also been working closely with the fusionist **Coalition for Freedom,** an ideal forum for wide dissemination of Party views amongst leaders and representatives of the many diverse groups forming the Coalition . . . A **South Florida Chapter of the Libertarian Party** has been formed, with monthly meetings planned. Please phone **Carl Hastings,** Ft. Lauderdale, 584-5907 or **Dr. Fred Miley,** Miami, 891-7933 for further information . . . *The Basic Principles of Objectivism* is being given every Tuesday (the 20-week series started January 29) and *The Principles of Efficient Thinking* is being given every Thursday (the 10-week series started January 31) at 8 P.M. sharp at 2311 McGee, Apt. A, Berkeley, California. The donation for each session of the recorded lecture series is 50 cents. Please call **John Harris** in Berkeley at 548-2242 for further information.

Please send material for inclusion in FRONTLINES *to Lynn Kinsky at* REASON, *P.O. Box 6151, Santa Barbara, CA 93111. Meeting and activity announcements will be carried as space permits; however we must receive announcements two months before the actual event if we are to publish it as a "coming attraction" rather than as history. Tell us about your group, your activities, your strategies for social change in as much detail as possible. Items accompanied by photos are especially welcome.*

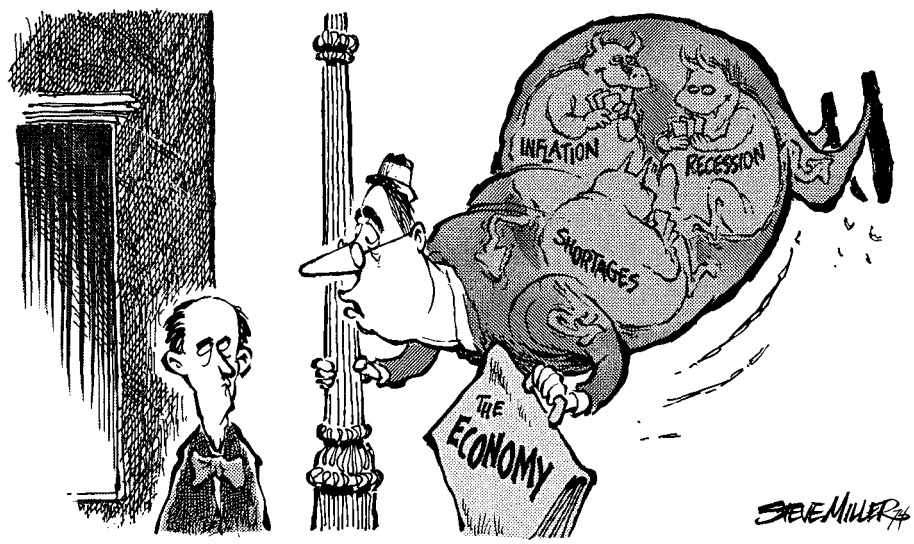
publisher's notes

• **REVOLUTION AGAINST INFLATION:** International financial expert Harry D. Schultz has this to say about economic conditions in 1974: "Many are predicting *de*flation to take over if business slumps and profits shrink. I say: inflation will continue unabated in '74. The pace may in fact accelerate. I fear inflation will be with us not only in '74 but for the rest of the decade. When government took over money printing from private banks they got the power to sustain inflation. This was abetted by creation of the IMF, which virtually is an engine of global inflation. Traditionally and more so now than ever, only a coup d'etat, a revolution ends uncontrolled inflation. Don't look for market forces to bring it on, for *all* governments are not socialist, in varying degrees, and they subvert market forces, at least on the surface. Money will continue to be debased, people will continue getting poorer, some will starve, but an illusion of relative prosperity will be maintained through money floods, i.e. inflation through excessive credit and money creation. Inflation rate will ebb and flow, but will *not* become net deflation."

One of Dr. Schultz's few non-gloomy predictions for 1974 is the following: "Mike Oliver will reveal the location of a new nation (with land secretly acquired at the end of '73), to be officially founded in '74". For an in-depth discussion of Mike Oliver's ideas on the need for a new, free-enterprise enclave, see "Designing a Free Country: An Interview with Mike Oliver," in the December 1972 *REASON.* Copies are still available for $1.50.

• **HIGH PRICES OR GASOLINE SHORTAGES:** Long lines and lengthy waits at the gasoline station—and closed stations—are commonplace in many parts of the United States as we go to press. On February 16, the *LOS ANGELES TIMES* stated in a front-page story, "Gasoline rationing . . . will not be necessary in California unless panicky motorists bring it on themselves . . . ." Motorists throughout the country are looked to by all levels of politicians to hold highway speeds down and avoid panic buying. Yet in Europe, where retail gasoline prices have been allowed to drastically increase (20 to 30%) without price controls, the supply-demand mechanism has led to "only minimal inconveniences, no queues at stations, courteous attendants and unflustered customers," as reported in an article entitled, "Tired of Gas Queues? Go to Europe," in the February 15 issue of the *WALL STREET JOURNAL.*

Instead of allowing the market to clear in the United States (so that supply equals demand—which would occur when the price is allowed to go to approximately 85¢/gallon according to an economist for Arco), there is constant talk of rationing and strict enforcement of the newly-enacted 55 m.p.h. speed limit. In California, the Highway Patrol (CHP) has begun to write what they themselves identify as "marginal" citations—tickets for speeds 1 or 2 miles over the limit. The CHP is doing so as a significant change in its "enforcement perspective"—although it admits the limit is "not designed for traffic safety but for conservation of fuel"—on the ground that "vio-



"COULD YOU PLEASE DIRECT ME TO THE NEAREST EXORCIST?"

lations of this [55 m.p.h.] limit represent an improper drain of energy resources.". Unfortunately for the CHP, its patrolmen are spread so thin on the state's 100,000 miles of highways that "the chances of a driver getting a speeding ticket are remote." Given such an attitude, it is foolish to speed if a patrolman is around. But the incredible attempt of the state to regulate the conduct of *every* driver's speed in the name of setting priorities over scarce resources overlooks the value of time to a driver. Since the question of having sufficient supplies at higher prices—instead of inadequate supplies at lower prices—has not occurred to the bureaucrats, we suggest careful consideration of the comments of Professor Manne in his article this month: "[U]se every legal means at your command to vex, confuse, delay, undermine and avoid every regulation . . ."; "[M]orality, in the case of arrogant, intrusive, totalitarian laws, lies in the barest possible obedience and in refusal to cooperate willingly beyond the letter of the law." And keep your eye on your rear-view mirror.

• **THINGS COULD GET WORSE:** You might think that things are bad enough already, but look what's happening in Uruguay: The cost of living in Uruguay rose by 77.51 percent during 1973, according to the Economy Ministry (as reported in the *CHRISTIAN SCIENCE MONITOR,* February 7). Even so, this was good news for Uruguayans—compared with 1972, when the cost-of-living increase was 94.71 percent. And American merchants who have been prosecuted for price-ceiling violations might be relieved not to be in Russia, where an accountant and a storekeeper were recently sentenced to death for selling building materials and fertilizer on the black market (*LOS ANGELES TIMES,* February 16)—raising to 90 the number of Soviet citizens sentenced to die by firing squad in the past three years.

• **SAN DIEGO TEN REVERSAL:** On February 1, the Ninth Circuit Court of Appeals handed down a dramatic reversal of many of the convictions in the San Diego Ten case. Libertarian tax protester Chris Bates was among those exonerated from his conviction (on one count of attempt to secure seized property.) The case stems from events occurring at a protest demonstration in May 1972 when Robert Heck of San Diego was locked out of his business by the IRS for failure to pay back taxes. The Court of Appeals held that the IRS seizure of Heck's property was illegal. Previously, charges in the case against Hank Hohenstein had been dismissed.

• **LIBERTARIAN INSIGHTS:** Economic illiteracy is running rampant in the media's coverage of inflation and the energy crisis. Two recent articles make some sense: "Some Preliminary Effects of a Heavy Hand," by Alan Reynolds, *REASON* Contributing Editor and Associate Editor of *NATIONAL REVIEW,* in *NEW YORK TIMES,* January 20, 1974; and "The Helping Hand Behind Food Prices,"

(concluded on p. 49)

reason profile

It may come as a surprise to many libertarians in this age of William Kunstler and Nader's Raiders, but there actually *are* some libertarian lawyers in this country. One of this hardy band, and one who combines his legal profession with full-time libertarian work, is Davis Keeler, a 34 year-old senior research fellow at the **Institute for Humane Studies** (1134 Crane St., Menlo Park, CA).

Mr. Keeler converted to libertarianism at Robert LeFevre's **Rampart College** during a summer vacation from law school at Northwestern. He says the experience ruined him for lawyering and, after practicing law for several years, he left his Chicago Loop firm to join the Institute, which was then under the direction of Baldy Harper.

While still in Chicago, Keeler edited and published *RESEARCH REVIEW,* a monthly summary and analysis of economic news which attracted readers from all over the United States, as well as from England, Sweden, Switzerland, South Africa, and elsewhere. The principle behind the *REVIEW* was that if the libertarian view is the correct view of reality, then it should have some predictive value. One of the basic economic tenents of libertarianism holds that government intervention creates dislocations. These dislocations carry with them opportunities for gain as well as risks of loss. "These are what I tried to explore for my readers in *RESEARCH REVIEW,* and again in my current *Money* columns in *REASON.*"

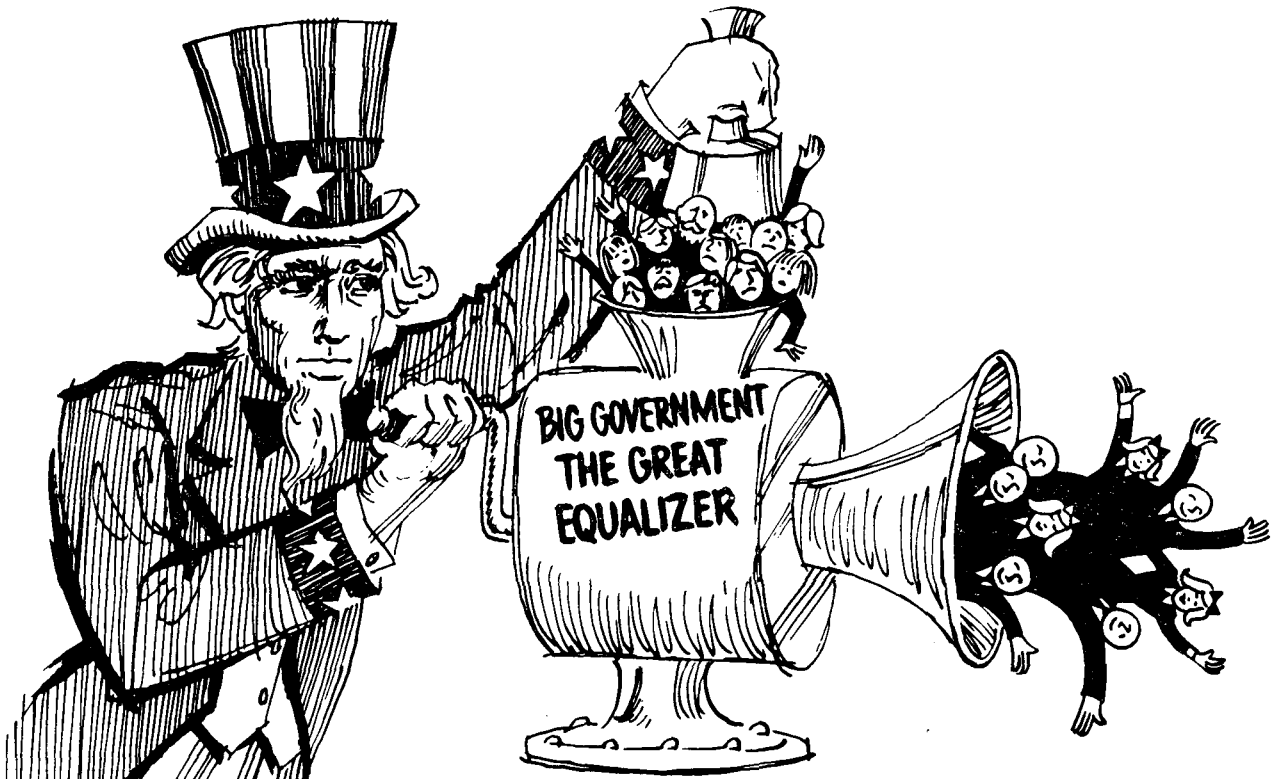
Keeler had to give up *RESEARCH REVIEW* when he moved to the Bay area to join the Institute and create its **Law & Liberty Project.** The purpose of the Project is to work within the common law and constitutional framework of American law to promote individual liberty. In keeping with the Institute's philosophy, the Law & Liberty Project avoids activism in favor of work designed to affect the long range development of the law. "The law," says Keeler, "does not change society; it generally merely reflects changes which have already occurred in the community."

The Project provides fellowships for legal research and writing, for conferences, publications, assistance to legal scholars, and similar programs to build a strong underpinning of libertarian-oriented legal scholarship. "We have to make freedom legally respectable." The Law & Liberty Project publishes a Newsletter which goes to more than 10,000 judges, law professors, attorneys, and interested scholars.

PHOTO CREDIT: Gus diZerega

DAVIS KEELER

Keeler lives in Menlo Park, California, with his pretty wife, Peggy, who is a nurse, and their two cats. Cats, he explains, are ideologically sound pets. While he has known many altruistic dogs and goldfish, he has never met a cat who did not have a firm grasp of rational self-interest. He is interested in science fiction, languages, history, and economics, and collects shares in South African gold mines. He is audited every year by the IRS.



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letters

TYPES OF DICTATORSHIPS

Some of the re-evaluations of American foreign policy have given us new and reasonable theories of how we got into our present mess. I hadn't previously considered the extent that exchanging diplomatic pleasantries plays in foreign policy til I read Professor Welch's "Containing Communism: The Art of Getting Along" in the January issue. But the problem with some libertarian critics of American foreign policy is that they see no difference between a dictatorship in a single country and a dictatorship allied with others to expand around the world.

Undoubtedly Diem wasn't a libertarian and we all agree getting involved in Vietnam was a mistake. However given a choice, I would rather live in a country where the rulers only want to control the government and steal some money rather than in a country where the rulers want to control every last aspect of my life. Furthermore, Diem never sent troops to take over any other country. Communist North Vietnam has troops in Cambodia, Laos, Thailand, and South Vietnam.

There is no moral government in existence today, but there are some less rapacious than others. If somehow we can convince the world to move toward libertarianism, I hope we don't proceed too much faster than the Communist bloc because I don't think they will allow us to keep whatever freedom we have now.

Ronald K. Wishart
Englishtown, NJ

RESIST ALL RESTRICTIONS

Re your reply to the letters you headed, "Bridge-building with conservatives:" (January) I feel that the letters you printed necessitated, from a libertarian viewpoint, a specific response on at least one point which you failed to mention (and "silence gives consent")!

Mr. Ramsey explicitly, and Mr. Dunn implicitly at several points, advocated that libertarians oppose an interventionist foreign policy. While it is true that government military activity is repugnant to a libertarian (and indeed helps distinguish one from a conservative), it should be apparent that consistency requires the libertarian to be *equally* opposed to a government interventionist foreign policy and to a government isolationist foreign policy. This means that, in *minimum* practical-action terms, the libertarian must call for an end to government-financed military, diplomatic, and world-political activities, *together with an immediate end to the taxes collected for these uses, and the borrowing and money-printing used as disguised taxes,* plus an end to all restrictions on *private* military, diplomatic, and world-political activities. Any other course involving ending government military (etc.) action, would coerce the individual wishing to actively oppose world collectivist movements, into financing their passive acceptance. This is the *minimum* libertarian criterion, and I would go much farther: I would refuse to give my consent or sanction to any supposed end to "interventionist foreign policy" that did not include an end to massive government "welfare," "job-training," "ecological," and other similar spending, which distorts the market economy away from the allocation of resources individuals could otherwise be intelligently expected to voluntarily contract for, to defend themselves against the encroachment of totalitarian collectivist forces.

Parenthetically, I could not be in stronger disagreement with Mr. Ramsey's contention that "we libertarians have had little problem being identified as liberals." [and, "instead, we have been lumped with conservatives."] What little publicity among opinion-makers that we have had, has tended to focus on certain libertarians advocating immediate U.S. withdrawal from the Southeast Asian war, support of marijuana decriminalization (*not* legalization, at least here in California!) initiatives, and other points on which we, or some of us, have been in (superficial) agreement with the left. That we advocate free-enterprise economics is thought to be, at most, a quirk, by these opinion-makers; we will "grow out of it" when we realize the "injustices" created by "unbridled (!) technology." That we (or many of us), like the Randians, accept Aristotelian, as opposed to Platonic, epistemological formulations, and that, consequently, we (or most of us) regard self-sacrifice as evil (and real), and the self as the basis of all rewards an individual can obtain in human life, would be news to almost any liberal who knows of the existence of libertarianism; he would be unable to see, even dimly, *why* our support on the draft, or drugs, or whores and girlie books, is a refutation rather than an endorsement of his position. I say with Mr. Ramsey, "We must keep up an indignant protest until this error is corrected."

David L. Rosenblatt
Santa Ana, CA

CHRISTIANITY AND SLAVERY

Mark Frazier's "Slavery and Socialism" (*REASON,* Feb. 1974) was well-written and informative, although readers of your journal should already have been familiar with the thought of Fitzhugh. In any case, the appearance of the article marks a propitious time to make a point.

Obviously a Randian, Frazier takes great pleasure in contrasting the "evils" of Christianity, altruism, being the keeper of one's brother, and family relationships, with the positive goods of selfishness and go-it-aloneness. He implies that anyone who is altruistic, or who desires to help his brothers, must sympathize with slavery and socialism. The presentation of Fitzhugh's ideas are merely a conduit to advance Frazier's own Objectivist viewpoint. Let Mr. Frazier's ears ring loud with the advice that one can be Christian, desire to help others, and uphold the importance of family relationships without being an advocate of slavery. It is precisely this harsh callousness so typical of the Randian philosophy that will nip the libertarian movement in its bud. These same thoughts apply to Professor Machan, a boring and one-dimensional writer who would apparently have a heart seizure if he were disallowed from using Rand's name in one of his articles.

Bryan Lefley
Chicago, IL

MINERVANS AND WORLD COURT

In the February 1974 issue of *REASON,* Mr. Lawrence Blair stated that the "Minervans" were so frightened of fighting the Tongans that they forfeited their moral and intellectual courage. He further stated that "If asking the U.N. World Court, an intellectually and morally bankrupt body, to decide the Minervan issue wasn't immoral, then I don't know what is."

Since I was, to some extent, involved with the Minerva project, I would like to state here that, to the best of my knowledge, no person connected with it went to the U.N. or the World Court, or any other

COMMITTEE FOR THE

ANTI-INFLATION AMENDMENT

To the Constitution of the United States

Box 1776, Chicago 60690

SECTION 1. **The Right to Trade**

Congress shall make no law restricting the freedom of wages and prices nor authorizing commodity allocations. The right of citizens to make contracts and to trade freely among themselves shall not be abridged.

SECTION 2. **Monetary Policy**

It shall be the policy of the Treasury of the United States to stabilize the supply of cash notes and Federal credit in circulation, and thereby to preserve and increase the purchasing power of the currency of the United States.

SECTION 3. **Fiscal Policy**

On the fourth day of July in the year following the year of ratification of this article, the sixteenth article of amendment to the Constitution of the United States shall be repealed. A levy of taxation sufficient to discharge the financial obligations of the Federal government shall be apportioned among the several States by Congress annually as the first act of each session, but the power of direct taxation shall be reserved to the several States. Congress shall not impose any tax on the property or income of citizens of the United States, nor shall any internal revenue service be maintained.

SECTION 4. **Commercial Policy**

The Government of the United States, or of any State, shall not, through any law or administrative action, prevent or forbid any person or corporation from offering for legitimate sale or from lowering the sale price of whatever goods or services may be commercially traded.

IF YOU SUPPORT THIS PROPOSAL SEND YOUR NAME TO THE COMMITTEE

such body to ask for resolution of the Minerva matter. Minerva was always considered by me as only a small part of the new country project. We wanted a place to hang our flag, and thought Minerva may suffice for that. We also planned a sea city type of habitat, plus one or more townships on reclaimed land. Even without the Tonga problem, this would have been a difficult project. Therefore, I stated, prior to the start of the Minerva venture, that, should we have an argument over that far away place, we should not pursue it, as we could argue about much closer and more feasible areas, if we wanted to.

I would like to advise interested persons that the new country project is very far from being dead. People are working on it full time. It is a difficult project—many times more difficult than I thought it to be—but we are not about to give up on it.

Mr. Blair stated that when he has seen an Objectivist Patton interviewed by *REASON*, he will know that the draw bridge has been lowered from the Ivory Tower. We may not have a person with Patton's type of talent on our new country project, but we do have capable and determined people among us to assure eventual success.

Mike Oliver
Carson City, NE

AN OPEN LETTER TO CONGRESSMAN STEVE SYMMS

Dear Congressman Symms:

I believe that you are open to being rationally persuaded to reject what would commonly be called your "anti-amnesty" stand [as discussed in your interview in *REASON*, February 1974]. I believe that what I say here ought to be rationally persuasive.

The initial premise of my argument is one which I am certain you will accept. It is that a person's right to his life and liberty, to the possession of the minutes, days, and years of his life, is at least as legitimate a right as his right to those physical objects external to his body which he has created or for which he has traded. Assuming that you accept this premise, let me ask you to imagine the following scenario: In year 1, citizen Goldbug of Idaho owns five pounds of gold. He has a right to that gold having mined it himself or having bought it from someone else who rightfully possessed it. Unfortunately, the government issues a decree demanding that Goldbug hand over his gold in exchange for a sum of government currency for which Goldbug would not voluntarily exchange his gold. In order to keep the gold which is rightfully his, Goldbug flees to Canada. Other owners of gold do not flee. Their gold is stolen. Then, in year 2, the government changes for the better. It allows private possession of gold—though it does not return the gold it acquired through forced sales.

Now, I ask you, would you and/or should you oppose Goldbug's return to Idaho with his gold? Would you and/or should you say that though Goldbug can return, since others have lost their gold, Goldbug too must suffer this loss? I presume you would not oppose Goldbug's return. I presume you see the injustice of demanding that Goldbug suffer as, and because, others have suffered. I presume you see that forcing Goldbug to remain in Canada through the threat of stealing his gold if he returns would be in the same moral category as the thefts of gold which Goldbug's former neighbors suffered.

Now, the Goldbug case is, in all relevant respects, exactly analogous to the case of the draft-dodger who fled to Canada. In fleeing he retained what was rightfully his. He coerced no one. Some of his former neighbors were deprived of what was rightfully their's. But surely these moral wrongs do not strengthen the case for depriving the draft-dodger of his life and liberty or for forcing him to remain in Canada by means of a threat to so deprive him.

If you accept the initial premise, I cannot see how you can escape the conclusion that the draft-dodger must be permitted to return. If you do not accept the initial premise, I cannot see how you can believe in property rights, e.g., rights to gold.

There are two further points that you should consider. In forbidding a person from occupying a certain spot, the government is exercising ownership-type authority over that spot. For surely it is the owner who properly determines who may occupy a particular place. In approving of the government prohibition, you are, therefore, committed to one or both of the following claims: (a) The government really owns what passes for private property, and (b) government property is a legitimate and handy institution. Consider, also, what attitude you would and you should have toward Goldbug. Do you think that those who drove him out of Idaho should forgive *him* for being driven out? Or do you think that, *at the very least*, it's those who drove him out who should ask for forgiveness? I presume that you would opt for the second alternative. But, then, surely the only genuine issue in the draft-dodger case is whether amnesty should be granted to those who instituted and maintained the draft.

I do not believe that it is wrong for you to recognize political realities. If your district is "anti-amnesty", there is no reason for you to be the *leader* of the "pro-amnesty" campaign. There's lots of other things to be done. But don't be or become living, walking, evidence for the liberal claim that advocates of capitalism place a higher value on "property rights" than on "human rights". Recognize that "property rights" exist merely as a form or application of the rights to life and liverty and that compromising one's defense of the latter rights undercuts one's stand for the former rights.

Dr. Eric Mack
Department of Philosophy
Eisenhower College
Seneca Falls, NY

Letters from readers are welcome. Each receives editorial consideration, although only a selection can be published and none individually acknowledged. They should be kept as brief as possible and are subject to condensation. Letters submitted for publication in this column should be typed, double-spaced. Send letters to REASON, P.O. Box 6151, Santa Barbara, CA 93111.

—ANNOUNCING—

Reason's Letter of the Month

The battle of ideas will not be won if good people remain silent. One of the least-cost methods of bringing new ideas to people is via letters to the editor. If every libertarian wrote just one such letter each week—to a newspaper, magazine, or professional journal—the impact on our culture could be substantial. *REASON* would like to encourage such an enterprise. To this end, we invite our readers to send us *each* letter they have written which is *published* in an established publication within the preceding month. Each such letter will be reviewed by our editors and, subject to editing for space requirements, each month *REASON* will reprint in this section our selection of the best *published* letter. When forwarding letters, please be sure to furnish us the name and date of the publication in which the letter appeared. Each month's winning letter writer will receive a free six-month extension of his or her *REASON* subscription.

(continued from page 32)
bard submits that a voluntary taxation system is impossible of attainment, because if people were "dissatisfied with the quality of defense they receive from the government, or with the price they must pay, they would elect to form a competing defense agency of 'government' within the area and subscribe to it," thus leading to the withering away of a central government over a given territory.

Even if no conclusive answers are available, the issue of voluntary taxation is a fascinating one for those who value free choice. For the time being, it is difficult to see much merit in either supporting or opposing current state-lottery proposals. On the assumption that a state lottery were able to raise significant sums of money, there is obviously no assurance that other taxes would go down. And it is difficult to be enthusiastic about the prospect of hiring new teams of bureaucrats to operate a new state-lottery. So, unless a state-lottery proposal were coupled with a plan to decriminalize gambling, rather than voting "yes" or "no" on a state-lottery measure, I suggest you take a cue from the League of Nonvoters and mark your ballot "none of the above." ◻

MANUEL S. KLAUSNER

(continued from page 37)
role which calls for her to scream insanely, become a freaked-out revolutionary, and inexplicably fall in love with Woody Allen after fighting with him through most of the movie. As a comedy, *SLEEPER* is a mixed bag. It is undeniable that Woody Allen (who co-authored the screenplay) has a gift for subtle and intelligent humor; but in *SLEEPER* he also displays a propensity for visual slapstick that sinks below the level of The Three Stooges. Rated "PG."

• **"BESTS" OF '73:** From the 50 movies I saw during 1973, here are my selections for "bests" of the year:

Best picture: **THE EXORCIST.**
Best actor: **AL PACINO** in *SERPICO.*
Best actress: **BARBRA STREISAND** in *THE WAY WE WERE.*
Best supporting actor: **VINCENT GARDENIA** in *BANG THE DRUM SLOWLY.*
Best supporting actress: **LINDA BLAIR** in *THE EXORCIST,* and **DYAN CANNON** in *THE LAST OF SHEILA.* ◻

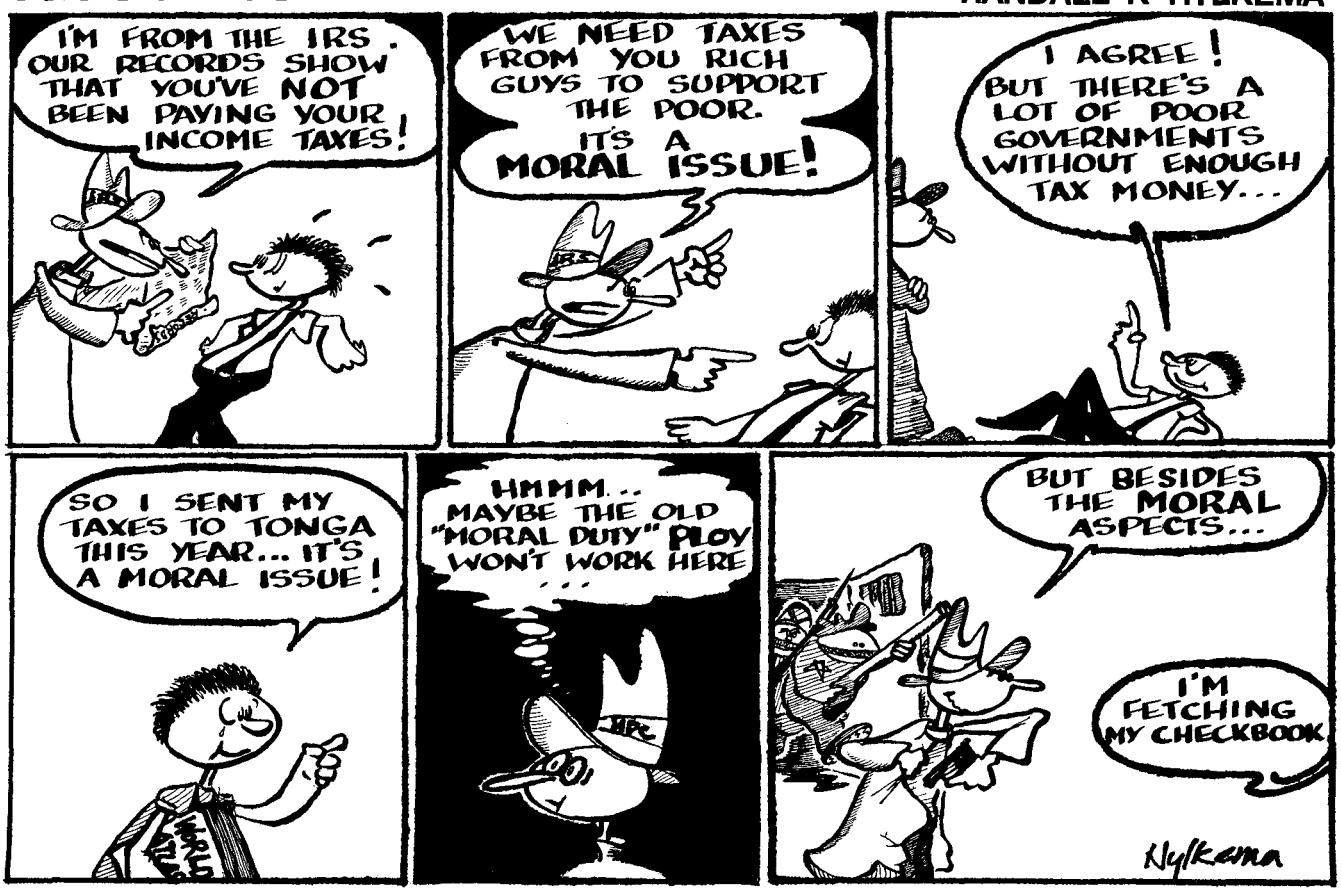
(continued from p. 44)
by Professor Roger LeRoy Miller (Univ. of Washington), in *HARPER'S,* February 1974—one of *HARPER'S* first libertarian pieces. Also excellent fare is University of Chicago Professor Ronald Coase's widely-discussed comparison of "The Market for Goods and the Market for Ideas," to appear in the March *PAPERS & PROCEEDINGS* issue of the *AMERICAN ECONOMIC REVIEW.*

• **REASON PAPERS UPDATE:** Editor Tibor Machan reports a steady stream of orders for the inaugural volume of Reason Enterprises' new journal, *REASON PAPERS.* Cash flow and printing problems are delaying the initial issue, but those who have placed orders should rest assured that they will be filled. To obtain a copy at the special prepublication price, see ad on page 2 of this issue.

• **COMING NEXT MONTH:** *REASON's* May issue will be the previously announced double-size financial issue, devoted to practical advice on personal financial survival in the face of an impending monetary crisis. Many prominent contributors are included in the Special Issue (cover price $3.00), edited by Bob Meier.

rudebarbs

RANDALL K HYLKEMA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WE NEED TAXES FROM YOU RICH GUYS TO SUPPORT THE POOR. ITS A MORAL ISSUE!
I AGREE! BUT THERE'S A LOT OF POOR GOVERNMENTS WITHOUT ENOUGH TAX MONEY...
SO I SENT MY TAXES TO TONGA THIS YEAR... IT'S A MORAL ISSUE!
HMMM... MAYBE THE OLD "MORAL DUTY" PLOY WON'T WORK HERE
BUT BESIDES THE MORAL ASPECTS...
I'M FETCHING MY CHECKBOOK
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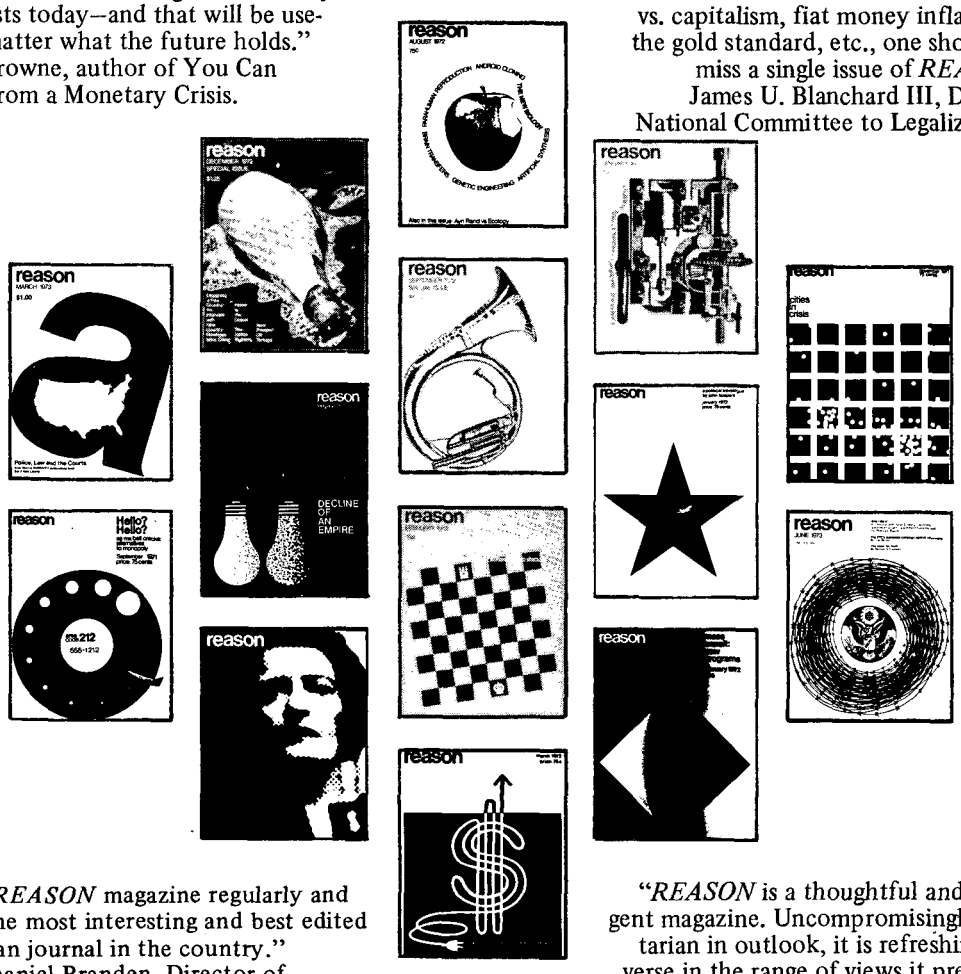

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